CHURCH ASSEMBLY

OPINIONS OF THE LEGAL BOARD

SECOND AND ENLARGED EDITION

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NATIONAL ASSEMBLY OF THE CHURCH OF ENGLAND.

OPINIONS OF THE LEGAL BOARD

TOGETHER WITH THE

Rules for the Representation of the Laity,

The Parochial Church Councils (Powers) Measure, 1921,

AND OTHER FORMS AND DOCUMENTS ISSUED BY THE BOARD.

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*Resigned April, 1928.

MISSING CONTENT
NOT WITH

PREFACE

SOON after the Central Board of Finance had been set up in 1914 it was found necessary to establish a Legal Committee for various purposes, and it became not uncommon for ecclesiastical authorities to ask this Committee for legal advice, in much the same way that those who are responsible for local government in civil affairs refer to the central authorities and their legal advisers for similar assistance. The Legal Committee answered the questions thus addressed to it, but work of this kind was not strictly within its province, and in order to regularise this procedure the Archbishop of York moved, and the Church Assembly resolved, at the Summer Session of 1924, that a Legal Board of the Assembly should be constituted. The Board thus established is identical in *personnel* with the Legal Committee of the Board of Finance, and the opinions expressed by each body have the same weight, namely, that which attaches to the unofficial views of the individuals composing it on the facts before them; for in neither case is there any authority to make or "lay down" the law.

It will be seen that the opinions are grouped under three main heads according as they relate to the Central, Diocesan, or Parochial Authorities. Some of these opinions have required the most careful consideration. All of them relate to matters which have, in fact, given difficulty. It has not been thought necessary to give the exact form or source of the inquiries addressed to the Board or Committee, and the opinions given have sometimes been extended or abbreviated

for the sake of practical utility. In every case they have been confirmed by the Board, and are for simplicity attributed to the Board; but references at the end of each opinion generally indicate whether the matter came before the Board or the Committee, and relate to the original documents, which are often long and technical.

Nothing has been included except that which is of present general interest. Thus the investigations and opinions on questions relating to Tithe Rent-charge, culminating in the Tithe Act, 1925, are excluded. On the other hand it has been thought well to reprint the Rules for the Representation of the Laity and the Parochial Church Councils (Powers) Measure, 1921, because they are in constant use. These Rules are now under re-consideration (Representation of the Laity Measure [C.A. 192 B]. If this Measure passes into law, some of the opinions will require modification. Similarly a number of precedents and other documents have been appended, together with a list of publications which can easily be procured by those who may have use for them.

The great and growing demand for advice has led to the preparation of a second edition, which includes all the opinions given to the end of February, 1928, and some additional memoranda on points of interest.

April, 1928.

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Opinions of the Legal Board.

SECTION I.

CENTRAL AUTHORITIES.

i. CHURCH ASSEMBLY.

NOTE.—The Church Assembly was established in accordance with a Constitution appended to identical Addresses presented to His Majesty King George V by the Convocations of Canterbury and York, on the 10th May, 1919. By the Church of England Assembly (Powers) Act, 1919, commonly called "the Enabling Act," Parliament subsequently conferred upon the Assembly power to promote Measures which, when, after the special procedure in Parliament prescribed by that Act, they have received the Royal Assent, have the force and effect of Acts of Parliament. The Assembly is a deliberative body and is not incorporated; but its Finance Committee, the Central Board of Finance, is incorporated and holds property subject to its direction. The Assembly consists of three Houses: (1) the House of Bishops, that is to say, the members for the time being of the Upper Houses of the Convocations of Canterbury and York; (2) the House of Clergy, that is to say, the members for the time being of the Lower Houses of the Convocations of Canterbury and York; and (3) the House of Laity elected in accordance with "Rules for the Representation of the Laity" which formed

the Schedule to the Constitution and have been since somewhat modified by a Measure of 1922. The Addresses, the Constitution with the Rules for the Representation of the Laity and the Enabling Act are set out *in extenso* at page 55 of this volume. The Assembly's procedure is regulated partly by the Constitution and partly by Standing Orders. Particulars of these and other documents are set out in Appendix [XIII] on page 155 for the convenience of those who may wish to buy them.

In the case of *Rex* v. *Legislative Committee of the Church Assembly*, Ex parte *Haynes Smith* [1928], 1 K.B. 411, it was held by the Divisional Court (Hewart, L.C.J., Avory and Salter, JJ.) following *Rex* v. *Electricity Commissioners* [1924], 1 K.B., 171, that neither the Church Assembly nor its Legislative Committee is a body having legal authority to determine the rights of subjects and having the duty to act judicially, and therefore writs of prohibition or *certiorari* from the Court of King's Bench will not issue to these bodies.

ii. CENTRAL BOARD OF FINANCE.

NOTE.—"The Central Board of Finance of the Church of England" (the word "Limited" being omitted by Licence of the Board of Trade) was incorporated under the Companies Acts, 1908 and 1913, with limited liability, on the 15th June, 1914. Its chief duty is to act as the Finance Committee of the Church Assembly, by which most of its members are appointed. By its Memorandum of Association it is also

empowered to perform many other business services for the Church, including the acquisition and protection of copyrights and the granting of licences thereunder. The Board is fully representative of the whole Church, comprises men of great business experience, and employs efficient officers. It administers an increasing number of trusts for every kind of purpose connected with the Church. In legal matters it has the advice of a Legal Committee, which is identical in *personnel* with the Legal Board of the Church Assembly.

Opinion No. 1.

Central Church Fund.—In reply to questions submitted by the Central Board of Finance, the Legal Board reported as follows :—

(i) The full name of the Central Board of Finance is determined by its Memorandum of Association as follows: "The Central Board of Finance of the Church of England." This name cannot be altered without the steps necessary to alter the name of any other limited company.

(ii) The "Central Church Fund" is the name of a fund established by the Central Board of Finance some years before the Church Assembly was constituted.

(iii) The Church Assembly has no direct control over the Central Church Fund.

(iv) Property given or left to "The Church of England" passes to the Central Board of Finance, who hold it in trust to be applied as the Church Assembly directs. (The judgment of Mr. Justice Romer in *Re Isaac Barnes, deceased*, is printed at p. 141.) So, too, all money paid to the Central Board of Finance

as Finance Committee of the Church Assembly is held in trust for such purposes as the Assembly directs. It is carried to the account of the "Church Assembly Fund." (L.B. 25/1924.)

iii. CONVOCATION.

Opinion No. 2.

Proctors. Electoral Areas.—The sub-division of dioceses for the election of Proctors is not in accordance with the Canon. (L.B. 6/1925.)

Opinion No. 3.

Proctors. Elections.—Candidates for election as Proctors are entitled to be present at the counting of votes. (L.C. 24/1924.) *See Opinion No.* 4.

SECTION II.

DIOCESAN AUTHORITIES.

i. DIOCESAN CONFERENCE.

NOTE.—The constitution of a Diocesan Conference is determined upon lines laid down by the Diocesan Conferences Regulation, 1922, and differs within these limits in different dioceses. The Conference performs in the diocese a function somewhat similar to that of the Church Assembly in the Church at large. It has power to deliberate on all matters concerning the Church of England in the diocese, and to make such provision in respect thereof as the Bishop may rule to be within its competence, but may not issue any statement purporting to declare the doctrine of the Church on any questions of theology. The Conference consists of the Bishop, a Chamber of Clergy, and a Chamber of Laity, and its procedure is regulated partly by the above Regulation and partly by its own Standing Orders. In the Constitution of the Church Assembly the expression "Diocesan Conference" includes any assembly of Clergy and Laity recognised by the Bishop as a Diocesan Conference of the diocese, and containing lay representatives elected in accordance with the Constitution (Interpretation Measure, 1925, Section 4). Provision has recently been made for the constitution of Diocesan Conferences in new or divided dioceses by the New Dioceses (Transitional Provisions) Measure, 1927.

Opinion No. 4.

Chamber of Clergy.—(i) On November 20, 1926, the Archbishop of Canterbury ruled as follows :—

> The Chamber of Clergy must consist either (*a*) of all the clergy beneficed in the diocese or licenced under the Bishop's seal to officiate therein or (*b*) of *ex officio*, representative and appointed members. These alternatives are mutually exclusive. The Chamber of Clergy must be constituted in accordance with one or other of these alternatives and cannot be a blend of both. Under the Diocesan Conferences Regulation 1922, Clause 9, any question as to the interpretation of the Regulation is to be decided by the Archbishop of the Province. "Benefice" apart from any context means an office to which some external or material right attaches. Honorary Canonries are constituted under the authority of 3 and 4 Vict., c. 113, section 23, and 4 and 5 Vict., c. 39, and these Statutes make it clear that an Honorary Canon is entitled to a stall and that he has to be collated. Accordingly the Statutory Schedules of fees from time to time established under 1 and 2 Vict., c. 105, section 131, now contain fees both for collation and induction to Honorary Canonries. In these circumstances Honorary Canonries are benefices within the meaning of the Regulation. The same arguments with perhaps even greater force apply to Prebendaries.

(ii) It having been pointed out that the electorate thus constituted for the Chamber of Clergy differed from that for the Lower House of Convocation, the Archbishop asked for the opinion of the Legal Board, which was conveyed in the following terms :—

> In view of the differing functions of the Lower House of Convocation and of the Diocesan Chamber of Clergy, the Board sees no clear necessity for identity of electorates,

(L.B. 6/1925.)

Opinion No. 5.

Chamber of Laity.—A member of the House of Laity of the Church Assembly is *ipso facto* a member of the Diocesan Conference of the diocese by which he is returned; but a member of the Chamber of Laity of a Diocesan Conference is not *ipso facto* a member of a Parochial Church Council unless he is the lay representative elected to the Diocesan Conference by the Parochial Church Meeting of the Parish.

(L.C. 17/1923. *See Opinions Nos.* 11 *and* 35.)

Chamber of Laity: *ex officio* Membership of Ruri-Decanal Conference.

(*See "Ruri-Decanal Conference," Opinion No.* 12.)

Opinion No. 6.

Teachers and Students.—"Teachers or Students" in Rules for the Representation of the Laity, IV. 3. (2), properly means those whose principal occupation is the giving or receiving of systematic instruction. But regular, *though not principal*, occupation in systematic instruction, such as giving regular paid lectures at technical institutes, might be sufficient qualification; not so the giving of occasional or amateur instruction, such as is given at ordinary Sunday schools. The qualifying teaching and studying are probably contemplated as generally correlative, though not necessarily so; for instance, a University Extension lecturer might be qualified, though occasional attendance at his lectures would not qualify. So, too, a student professionally engaged in independent research might be qualified.

(L.B. 24/1927.)

Opinion No. 7.

Lay Electoral Commission.—It is the duty of the Diocesan Conference to appoint a Lay Electoral Commis-

sion under the Rules for the Representation of the Laity, section III, 9; but if they have neglected to do so, the Bishop may in case of need provide for the appointment under section V, 2. For in an Act of Parliament or a Measure the word "person" includes a body corporate or unincorporate (Interpretation Act, 1889, section 19), and the same applies in the opinion of the Board to the Rules for the Representation of the Laity. As a regular practice, however, the appointment should be by the Conference; and, if it is thought troublesome to keep on appointing commissions which may not have to act, the Legal Board think it would be sufficient if the Conference appointed by scheme, *e.g.*, the Diocesan Chancellor and Registrar, the senior Archdeacon able and willing to act, and three other persons to be nominated by the Bishop as occasion requires; say three to be a quorum. (L.B. 13/1926.)

Opinion No. 8.

Non-resident Members.—Non-residence in the diocese is not a disqualification for membership of the Diocesan Conference, and a member leaving the diocese does not thereby vacate his seat in the Chamber of Laity.
(L.B. 15/1926.)

Opinion No. 9.

"Actual Communicant."—An Electoral Commisssion duly constituted (R.R.L., section III, Rule 9) although the words of Rule 9 are obscure, may entertain an appeal on the ground that the person elected is not an "actual communicant." (L.B. 22/1927.)

Opinion No. 10.

Deaconesses.—A deaconess is not entitled to membership of the Diocesan Conference as a "Clerk in Holy Orders." (L.B. 22/1927.)

ii. RURI-DECANAL CONFERENCE.

NOTE.—Provision is made by the Rules for the Representation of the Laity for elections to Ruri-decanal Conferences. The Ruri-decanal Conference is an essential part of the machinery for electing a Diocesan Conference when the diocese is too large for each parish to be directly represented thereon.

OPINION NO. 11.

Membership.—A member of the House of Laity in the Church Assembly is not *ipso facto* a member of any Ruri-decanal Conference. (L.C. 17/1923.)

OPINION NO. 12.

Chamber of Laity of Diocesan Conference: *ex officio* Membership of Ruri-Decanal Conference.—Representative members of the Chamber of Laity of a Diocesan Conference elected at a Parochial Church Meeting are not *ex officio* members of the Ruri-Decanal Conference. The Rules for the Representation of the Laity contemplate (III 4 (1) (ii)), that members of the Ruri-Decanal Conference shall be elected by the Parochial Church Meeting, and if the election to the Chamber of Laity is also in the hands of the Parochial Church Meeting and it is desired that the same persons should represent the parish on the Diocesan Conference and on the Ruri-Decanal Conference, the proper course is to elect them to both. (L.B. 27/1928.)

iii. DIOCESAN BOARD OF FINANCE.

NOTE.—By the Diocesan Boards of Finance Measure, 1925, the Diocesan Board of Finance must be incorporated. It is the Finance Com-

mittee of the Diocesan Conference, and has other functions in the diocese similar to those of the Central Board of Finance in the Church at large. (*For Form of Memorandum of Association, see Appendix III.*)

Opinion No. 13.

Holding of more than two acres of Land without Licence.—Section 19 of the Companies (Consolidation) Act, 1908, applies to a Diocesan Board of Finance both in its capacity as beneficial owner and also as trustee (administering or custodian). (L.C. 22/1923.)

iv. BISHOP'S OFFICERS.

Opinion No. 14.

Appointment of Diocesan Registrar and Bishop's Secretary.—The Legal Board gave the following answers to questions asked by a Bishop :—

Question.—Who appoints the Diocesan Registrar? The Bishop? If so, has it to be confirmed by the Dean and Chapter, or is this optional, and if not done, what is the effect?

Answer.—The Bishop appoints. Where there is a Dean and Chapter they usually confirm. In any case the office is in effect freehold.

Q.—Does the Archdeacon appoint his own Registrar?

A.—Yes.

Q.—Does the Chancellor of the Diocese appoint his own Registrar?

A.—No. The Diocesan Registrar is Registrar of the Consistory or Commissary Court, *i.e.*, the Chancellor's Court.

Q.—Must the person appointed be a lawyer?

A.—His duties make this a necessity.

Q.—Can the appointment be made without the freehold?

A.—No. But an Acting Registrar may be temporarily appointed.

Q.—Or can the Bishop appoint subject to any conditions he thinks fit as to fees, freehold, or work to be done?

A.—No.

Q.—Would it be lawful for the Bishop to delegate the carrying out of the duties of the Registrar and Legal Secretary to anyone without actually appointing him Registrar?

A.—No.

Q.—Would it be lawful for the Bishop to appoint the Diocesan Board of Finance (an incorporated body) as Registrar, and order all fees to be paid to the Board, or to delegate the duties or part of the duties to it?

A.—No. Some of the duties, *e.g.*, attending the Bishop at a consecration, are personal.

Q.—Is it lawful for the Bishop to appoint a Registrar at an agreed fee, or according to work delegated to him by the Board of Finance, and to order all fees to be paid over to the Board of Finance?

A.—No. The right to fees receivable by statute cannot be taken away by agreement. A Measure would be necessary.

Q.—It is presumed that the Bishop has an entirely free hand in the appointment of Legal Secretary, and that no freehold attaches to the office.

A.—Yes. (L.B. 7/1925.)

SECTION III.

PAROCHIAL AUTHORITIES.

NOTE.—The Parochial Church Council is elected and summoned and conducted in accordance with the Rules for the Representation of the Laity, printed below at p. 60, and Rules of Procedure scheduled to the Parochial Church Councils (Powers) Measure, 1921, also printed below at p. 88. Its powers are determined by that Measure. Churchwardens are elected as prescribed by section 13 of the same Measure, and they retain their former powers and duties except in so far as these have been transferred to the Parochial Church Council by the Measure.

Attention is drawn to Chancellor Errington's Charge to Churchwardens, Appendix XI, p. 144.

i. CHURCHWARDENS.

OPINION NO. 15.

Poll at Election.—By section 13 of the Parochial Church Councils (Powers) Measure, 1921, the churchwardens are to be elected by the members of the Vestry and of the Parochial Church Meeting sitting together, and the same conditions as to voting and demand of a poll are to apply as at a Vestry. The Legal Board, having considered the grounds of certain decisions given before 1872, when the Ballot Act was passed, and the opinion of Vice-Chancellor Bacon, given since, is of the opinion that when a poll is demanded the vote may be taken by ballot provided that the possibility of a scrutiny is preserved, as, for instance, if the voter signs the ballot paper, or if the presiding officer identifies the ballot paper by a number or some other distinguishing mark by which the voter also may be identified. (L.B. 5/1925.)

Opinion No. 16.

Admission of Churchwardens.—Any doubt as to the eligibility of or method of electing a churchwarden does not entitle the Archdeacon to refuse to admit him to office, such admission being merely a ministerial act, and the validity of the election being triable elsewhere.

(*But see Opinion* 17 *below.* L.C. 19/1923.)

Opinion No. 17.

Admission of Churchwardens from a Parish where there is no Parochial Church Meeting.—Where an Archdeacon knows of his own knowledge or otherwise that without any doubt a person coming for admission as churchwarden has not been elected by the proper electing body, he can refuse to admit him (*Rex* v. *Williams*, 8 B. & C., 681).

It appears doubtful, however, whether an Archdeacon can, or in any event should, refuse to admit churchwardens of a parish in which he knows there is no Parochial Church Meeting, for the following reasons:—

(*a*) It is possible to contend that if a Vestry is duly convened as a Vestry, but there are no enrolled electors or none such choose to attend, the Vestry can proceed to elect. If so, there is a doubt, which precludes the Archdeacon from refusing to admit.

(*b*) If no such contention is possible, and the persons coming to be admitted as churchwardens are not admitted, the churchwardens at the date of the Measure would continue in office; and if there were none such, the parish would have no churchwardens.

It is very unsatisfactory to have no churchwardens, or only prehistoric churchwardens, in a parish, and really better to have churchwardens, though irregularly elected, who come for admission. On the other hand there is no doubt the consideration that the effect of admission is to place the churchwardens in a quasi-legal position, and thus, perhaps,

connive at a state of circumstances (*i.e.*, the absence of a Parochial Church Meeting), which is inconsistent with Church legislation.

On the whole it is thought that, having regard to the doubt above referred to, the importance of churchwardens being properly admitted and the probability that the refusal to work the Measure in such parishes is a passing phase, Archdeacons should not refuse admission in the circumstances indicated.

(L.B. 25/1927.)

Opinion No. 18.

Powers of Churchwardens transferred to Parochial Church Council.—The powers transferred by section 4 of the Parochial Church Councils (Powers) Measure, 1921, are the powers, duties and liabilities attaching by common law or statute to churchwardens as such, and "the financial affairs of the Church" there referred to means mainly proper provision for the fabric and services. Churchwardens, or the churchwardens and Incumbent, are often appointed trustees or treasurers of other funds associated with the Church, and if such funds are held for ecclesiastical purposes, the administration thereof may be transferred to the Parochial Church Council if all parties concerned (including, if necessary, the Charity Commissioners) so agree, but they are not transferred by the Measure. Reference should be made to *Marson* v. *Unmack* (39 *Times* L.R., 555).

(L.C. 22/1923. *See Opinions* 19 *and* 43—*Funds.*)

Opinion No. 19.

Remaining Powers of Churchwardens.—In cases where no Parochial Church Meeting has been summoned and no Parochial Church Council formed, the legal powers and liabilities of the churchwardens are exactly as they were before the passing of the Parochial Church Councils (Powers) Measure, 1921.

(L.C. 19/1923.)

ii. SIDESMEN.

Opinion No. 20.

Duty of Sidesmen.—Sidesmen hold a distinct office, their duty as defined by the Canon being to assist the churchwardens, by whose instructions they should be guided. (L.B. 27/1928.)

Opinion No. 21.

Election of Sidesmen.—(i) Under section 14 of the Parochial Church Council (Powers) Measure, 1921, the Incumbent and the Parochial Church Meeting are to be regarded as separate entities, the concurrence of both being required for the election of sidesmen; (ii) If the Incumbent and the Church Meeting fail to agree upon a choice or fail to come to an arrangement under which the Incumbent appoints some of the sidesmen and the Church Meeting the others, the matter must be referred to the Bishop under Canon 90. The Measure contains no provision as to what should happen in the event of a deadlock between the Incumbent and the Parochial Church Meeting.
(L.B. 22/1927.)

iii. PAROCHIAL CHURCH COUNCIL.

Opinion No. 22.

United Benefices.—When parishes are united, one Parochial Church Council serves the united parish; but when benefices only are united, and the parishes remain distinct, then Parochial Church Councils should be appointed for each. (L.C. 16/1923.)

Opinion No. 23.

Separate Councils or Committees for divisions of a Parish.—Section I of the Rules for the Representation

of the Laity makes no provision for the division of an ecclesiastical parish in order to constitute more than one Council; but, provided a quorum attends, there is no reason why by agreement the members representing a particular district should not alone attend meetings dealing with the affairs of that district and abstain from attending other meetings. Or in the alternative, district committees might be formed to deal with local affairs subject to ratification of their proceedings by the whole Council. (L.B. 20/1927.)

Opinion No. 24.

Failure to Elect a Parochial Church Council.—In a case where a Parochial Church Meeting had declined to elect a Parochial Church Council, the Legal Board advised that Parochial Church Councillors hold office until their successors have been appointed, and that in the particular case before them the incumbent should summon a meeting of the members of the previous year's Parochial Church Council for the purpose of drawing cheques upon funds standing in the Council's name. Funds, however they originate, if they stand to the credit of the Council, or of the Incumbent and Council jointly, cannot be dealt with by the Incumbent alone. Attention was also drawn to the power of the Bishop to order a fresh election in cases of this kind under section V, Rule 2, of the Rules for the Representation of the Laity.

(L.B. 22/1927. *See also Opinion* 58.)

Opinion No. 25.

Neglect or refusal to establish and summon a Parochial Church Council.—An Incumbent who neglects to perform his duties under the Rules for the Representation of the Laity and under the Parochial Church Councils (Powers) Measure, 1921, not only deprives those of his parishioners who may wish to do so of their legal right to take part in the government of the church, but he is also guilty of an ecclesiastical offence and of negligence, for which proceedings may be taken against him under the Church Discipline Act or under the Pluralities Act as may be preferred.* It

may be that he and the wardens also lay themselves open to an action for damages at the suit of any parishioner who is thus deprived of his rights, but the Legal Board expresses no opinion on this point.

Furthermore, under section V 2 of the Rules for the Representation of the Laity, and under section 16 of the Parochial Church Councils (Powers) Measure, 1921, the Bishop has power to appoint such persons as he thinks fit to perform the neglected duty and to give directions.

A majority of members attending a Parochial Church Meeting cannot by resolution prevent those who desire to form a Parochial Church Council from doing so.

When the population of a parish does not exceed 300, the Diocesan Conference under section III 4 (3) of the Rules for the Representation of the Laity may declare that the lay members of the Parochial Church Council shall consist of all such lay persons on the electoral roll as would be eligible for an elected Parochial Church Council. Unless this is done, a Parochial Church Council must be elected. (L.B. 6/1925.)

* The Benefices (Ecclesiastical Duties) Measure, 1926, now deals with neglect by Incumbents adequately to perform the ecclesiastical duties of their benefices, and provides expressly that amongst such ecclesiastical duties are the duties imposed upon incumbents by the Rules for the Representation of the Laity.

Opinion No. 26.

Admission to Roll of Parochial Electors.

Question.

1. A parishioner signs the buff form for admission to Roll of Parochial Electors.

His qualifications for membership (18 years of age; baptized; and not a member of any other religious body) are questioned at the Parochial Church Meeting.

Upon whom lies the onus of proof of qualifications? That is to say—must the

Answer.

1. The onus of proof is upon the objector.

Question.	*Answer.*
applicant produce proof of Baptism, &c., or must the objector produce proof that the applicant is not qualified?	
2. What does membership of another body mean? Is it communicant membership or merely adherent?	2. Neither of the expressions "member" or "adherent" is used in the Constitution or Schedule, and the expression "belong to" which is there used does not necessarily require communicant membership.
3. If the Parochial Church Meeting elect a member of the Parochial Church Council who to the Chairman's personal knowledge is not a communicant, at any rate in his own parish church—in which parish he lives all the year round — and in which there is only one church, and if further the Chairman objects to the election on the ground of his being unqualified and the candidate says "How do you know that I do not communicate elsewhere?"—what is the unfortunate Chairman to do? This has actually happened.	3. The Chairman has the right to ask the question "Are you an actual communicant?" If the candidate replies "Yes," no further question should properly be put by the Chairman. If the answer "Yes" is challenged, the onus of proof is on the objector. If the candidate replies "No," or if he refuses to answer, he is disqualified. In case of dispute an appeal lies to the Electoral Commission of the Diocese. Generally, it is sufficient *primâ facie* proof that the candidate makes the assertion.
4. Can "communicant" be interpreted as having communicated *three* times during the past year?	4. Communication in accordance with the rubric is undoubtedly sufficient, but less may suffice, and it is for the Archbishops to determine what amounts to communicant membership. (L.B. 17/1926.)

Opinion No. 27.

Elections. Poll after vote by show of hands and declaration of result. -The opinion of the Board having been sought as to the right of an elector to demand a poll after the declaration of the result of an election at a Parochial Church Meeting, it was recorded that, having regard to the decisions in the following cases—namely (in the Ecclesiastical Courts), *Anthony* v. *Seger*, 1 Hagg. Con., at p. 13, and (in the Common Law Courts) *Campbell* v. *Maund*, 5 A. and E., at pp. 880 and 881—(in which it was held that a show of hands is only an informal manner of election which is completely superseded by a poll, and that the demand for a poll cannot reasonably be expected to be made until the necessity for the demand arises owing to dissatisfaction with the decision on a show of hands), the Board was of opinion that the wording of section III 7 (2) of the Rules for the Representation of the Laity could not be construed as abolishing the ancient right of voters at Vestry Meetings to demand a poll either before or after the vote by show of hands was taken. (L.B. 28/1928.)

Opinion No. 28.

Election of Councillors. Manner of voting.—Unless a poll is demanded, the use of voting papers is not a legal requirement. If a poll is demanded, the form of voting paper set out in the Fifth Schedule to the Rules for the Representation of the Laity is subject to the provisions of the Fourth Schedule which prescribes the use of that form or one "to the like effect." Immaterial variations in the form used are permissible. But it is better to use the schedule form, which can be obtained ready printed from the Press and Publications Board, Church House, Westminster. (L.C. 24/1924.)

Opinion No. 29.

Announcement of Election.—An enquiry having been made as to when the result of an election should be announced and whether the election would be invalidated or made open to appeal by non-compliance with clause 8 (1) of section III of the Rules for the Representation of the Laity, as to publication the Board recorded the opinion

that, although the announcement should be made forthwith, neglect to take this course did not invalidate the election, and in the event of irregularity any person aggrieved would have a right to appeal within seven days from the publication of the result. (L.B. 28/1928.)

Opinion No. 30.

Mode of Publication of the Results of Elections to Parochial Church Councils.—The requirements of Section III, 8, of the Rules for the Representation of the Laity are satisfied by the announcing and publication of the names of the successful candidates. If the presiding officer is asked for the number of votes secured by any candidate, he may, and should, give the information if he is asked by anyone interested, and there is no reason why such information should not be published.

(L.B. 15/1926. *See also Opinion No.* 29.)

Opinion No. 31.

Constitution of Council. Assistant Curates.—A request having been received for a definition of the phrase in Section III, clause 10 (1) (ii) of the Rules for the Representation of the Laity: "the licensed Assistant Curate or the senior licensed Assistant Curate where there are more than one," the Board advised that unless one Curate had been definitely appointed to the position of senior Assistant Curate, the expression must be determined by the date of the licence. There was no reason why the other Curates should not be co-opted if so desired. (L.B. 23/1927.)

Opinion No. 32.

Co-opted Members. Limit of number.—The "elected lay representatives" referred to in the Rules for the Representation of the Laity, III 10 (1) (iv), are the lay representatives specified in the immediately preceding sub-section, *i.e.*, those elected by the Parochial Church Meeting to the Parochial Church Council, and the expression does not include lay representatives elected to the Diocesan Conference but not to the Parochial Church Council.

(L.B. 12/1926.)

Opinion No. 33.

Co-opted Members. Vacancies. — The Parochial Church Council has power to fill by co-optation any casual vacancies occurring during the year amongst its co-opted members. (L.B. 16/1926. *See also Opinion No.* 38.)

Opinion No. 34.

Voting of Residents in Parsonage-house.—If the parsonage-house of one parish is situated in another, the residents are, in the absence of any special Act of Parliament applying to the parish, resident, for the purposes of the electoral roll, in the parish in which the parsonage-house is geographically situated. (L.C. 25/1924.)

Opinion No. 35.

***Ex officio* Membership.**—Neither a member of the House of Laity in the Church Assembly, nor a member of the Chamber of Laity in a Diocesan Conference (except he be the lay representative elected by the Parochial Church Meeting of the parish) is *ex officio* a member of the Parochial Church Council in the parish upon the electoral roll of which his name appears. (L.C. 17/1925.)

Opinion No. 36.

Standing Committee.—A Parochial Church Council must meet four times a year; it cannot delegate its powers to the Standing Committee. The Standing Committee transacts the business of the Council between the meetings *subject to any directions given by the Council* (Parochial Church Councils (Powers) Measure, 1921, section 10).
(L.C. 32/1925. *See also Opinion No.* 47.)

Opinion No. 37.

Transfer from Electoral Roll.—An enquiry having been submitted as to the procedure to be adopted for transferring names from one electoral roll to another on

the division of a parish by Order in Council, the opinion was expressed that the Bishop should be asked to "make provision" under section V 2 of the Rules for the Representation of the Laity. (L.B. 27/1928.)

Opinion No. 38.

Resignation of a Parochial Church Councillor.

Question.	*Answer.*
1. Can a Parochial Church Councillor resign during his year of office?	1. Yes; with the permission of the Parochial Church Council.
2. May the Parochial Church Council accept or decline to accept any such resignation?	2. Yes.
3. Can vacancies in the Parochial Church Council during the year, whether occurring by (*a*) Death, (*b*) Removal, or (*c*) Resignation, be filled forthwith by the Council by co-optation?	3. No, except in the case of co-opted Members (see Opinion No. 33). Other vacancies may, and should, be filled by election at a Parochial Church Meeting, but the Council is duly constituted though this is not done. (*See section V, R.R.L., and Powers Measure, s.* 12.)
4. And in Case 3 (*c*) would it be open to any Member of the Council to move that the resignation be accepted and the vacancy filled?	4. He can move that the resignation be accepted. With regard to the filling of the vacancy, see No. 3 above.
5. If the person resigning has been elected by the Council for 3 years on the Ruri-decanal Conference, it is presumed that his seat on the Ruri-decanal Conference	5. This question should be amended by altering the word "Council" to "Parochial Church Meeting." The answer then is: if a member of a Ruri-decanal Council

Question.	*Answer.*
is not vacated until his term of office expires unless he specifically gives notice to the Ruri-decanal Conference?	does not resign from his position on the Ruri-decanal Council, he does not cease to be a member of the Parochial Church Council, because he still remains a member *ex officio*.

(L.B. 18/1926. *See Opinion No.* 39.)

Opinion No. 39.

Resignation of a Parochial Church Councillor.—Parochial Church Councils are, by the Powers Measure, constituted a corporate body.

At the common law of England a corporator's resignation is effective only when accepted by the corporation, and it is a condition that there must remain a quorum of the corporation, *i.e.*, the Parochial Church Council as a corporation cannot resign *en bloc*.

The common law has in no way been altered in this respect, and the Board is therefore of opinion that a member of a Parochial Church Council can only resign with the consent of the Parochial Church Council. In view of the fact that membership is only for a year, and that the candidate's previous consent to serve is necessary before election, this ruling does not appear to present any real hardship. (L.B. 19/1926. *See Opinion No.* 38.)

Opinion No. 40.

Continuous absence of Parochial Church Councillor from Church.—Enquiry having been made as to the position of a councillor and his wife (the latter a member of the Ruri-decanal Conference) who customarily absented themselves from their parish church, the Board confirmed a reply to the effect that, if the two parishioners were duly qualified and elected, they would, notwithstanding their customary non-attendance at the church, retain their position until the next election. (L.B. 27/1928.)

Opinion No. 41.

Attendance of members of the Congregation at Meetings of Parochial Church Councils and Committees.—(*a*) Members of the congregation may be allowed to be present at meetings of the Parochial Church Council if the Council gives authority for their admission; (*b*) members of the Council not being members of a Committee of the Council cannot claim to be present at meetings of the Committee unless the Council, when appointing the Committee, otherwise decide (Parochial Church Councils (Powers) Measure, 1921, section 9); (*c*) in either case the persons admitted should not be allowed to take part in the proceedings or vote.

(L.B. 24/1927.)

Opinion No. 42.

Press at Meetings of the Parochial Church Council.—The press has no right to attend meetings of a Parochial Church Council unless by permission of the Council. The Local Authorities (Admission of the Press to Meetings) Act, 1908, does not apply to Parochial Church Councils, but only to the local authorities which are defined in the Act. (L.C. 29/1924.)

Opinion No. 43.

Funds.—The funds receivable under the Parochial Church Councils (Powers) Measure, 1921, by the Parochial Church Council do not include the money referred to in the Prayer Book rubric, that is to say, the money collected at the Communion Service, but they do include all other money collected in church. Such other money, unless it has been collected for some special purpose which has been announced, is to be applied as the Incumbent and Parochial Church Council agree, or, failing agreement, as the Bishop may determine. (Parochial Church Councils (Powers) Measure, 1921, sections 4 (1) (ii), 6 (iv), and 16 (i).) *See Marson* v. *Unmack*, 39 *Times* L.R., 555.

Application of Money collected for Church Purposes. (*See Appendix VIII.*)

Opinion No. 44.

Stocks and Shares.—It is desirable that stocks and shares held on behalf of the Parochial Church Council should be in the name of the Diocesan Authority, and that any papers and certificates should be deposited in the Diocesan Office, though the Measure does not expressly provide this. (L.B. 14/1926.)

Opinion No. 45.

Auditing of Accounts.—Accounts ought, in conformity with the provisions of the Powers Measure, to be audited before the Annual Parochial Church Meeting, and the auditors, in accordance with the true construction of the Measure, should be appointed by the Meeting for the ensuing year. (L.B. 14/1926. *See also Opinion No.* 46.)

Opinion No. 46.

Liability of New Parochial Church Council for Deficit on Accounts of Outgoing Council.—The Parochial Church Council is a corporation with perpetual succession, and although there may be a change of members the corporation is continuously the same. If the debts are debts of the Council, *ex hypothesi* they are not debts of individuals; if individual Councillors have made themselves responsible in any way, then that personal responsibility remains, although these individuals cease to be Councillors. The question of whether there is any personal liability for particular debts depends upon a variety of circumstances, and no general answer can be given. If the corporation (and no individual) is liable for a debt, obviously the creditor cannot obtain payment except from corporate funds when there are any, but it is the duty of the corporation as a corporation to find the funds to pay its debts.
(L.B. 20/1927.)

Opinion No. 47.

Rules for the Representation of the Laity, and Parochial Church Councils (Powers) Measure, 1921.—Questions from a Secretary of a Parochial Church Council were answered as follows :—

Question.	*Answer.*
1. Are the chairman and vice-chairman of the Parochial Church Council *ex officio* chairman and vice-chairman of (*a*) the Standing Committee, and (*b*) the Finance Committee?	1. No. This is obvious from a comparison of the Rules for the Representation of the Laity, III, 10 (2) and (3), and Parochial Church Council (Powers) Measure, 1921, sections 10 and 11, with the Powers Measure Rules of Procedure, No. 15.
2. By whom should the annual statement of accounts be signed? (At present they are signed by the Vicar and churchwardens.)	2. See the Powers Measure, section 8. The Parochial Church Council has to submit a duly audited statement of accounts to the Parochial Church Meeting. The accounts as submitted *to* the Parochial Church *Council* for approval should be signed by the treasurer or treasurers (who may or may not be the churchwardens [Powers Measure; Rules of Procedure, No. 14]) and by the auditors. As submitted *by* the *Council to* the Parochial Church *Meeting* they should also bear the signature of the secretary of the Parochial Church Council as indicating their submission on behalf of the Council. Section 8 of the Powers Measure specifically states

Question.

Answer.

that if the Account and Statement be approved by the Parochial Church Meeting they *shall* be signed by the *chairman* of the Meeting and be forthwith published, &c.

3. Who is the responsible executive officer of the Parochial Church Council to see

(*a*) that an inventory of church property is made;

(*b*) that church property including considerable silver is insured?

3. Ordinarily this would be left for the chairman, treasurers and secretary to arrange between them. But it would be open to the Church Council to make things explicit by resolving that the secretary be instructed to take out a policy and the treasurers be instructed to pay the premium thereon as and when due (or that the *treasurers* be instructed to take out and pay).

The care, maintenance, preservation and insurance of the goods and ornaments of the church have specifically been transferred from the churchwardens to the Church Council. (Parochial Church Council (Powers) Measure, 1921, section 4, 1 (ii) (*b*)). The fact that the legal property still remains in the churchwardens in no way alters this.

4. In whose name or names should a claim be made in respect of a missing pyx valued at £12 and included in a policy against theft or burglary?

4. The claim would be made by the assured. It is common for the Church Council and the churchwardens to be joined as assured under a policy.

(L.B. 28/1928.)

Opinion. No. 48.

Contracts between Council and Councillor.—The Legal Board is of opinion that—

(*a*) Contracts between Parochial Church Councils and any of its members may be made.

(*b*) Members making contracts will be accountable for any profits made under such contracts unless they fully explain the nature of the said contract and their interest in it, and abstain from attending the meeting at which the voting upon the contract takes place.

(*c*) If these precautions be taken, members of Parochial Church Councils who take such contracts do not incur the risk of any penalty.

(L.C. 20/1923.)

Opinion No. 49.

Paid Officers.—The above Opinion No. 48 would apply to the appointment of paid officials so that they are not thereby rendered ineligible as members of a Council. But rules 13 and 14 of the Schedule to the Parochial Church Councils (Powers) Measure, 1921, provide that the treasurer must be unpaid, and that if a member of the Council is appointed secretary, he shall be appointed without remuneration. Nothing is said about assistant treasurer or assistant secretary.

Opinion No. 50.

Bond for repayment of Loan by Diocesan Authority.—It is for a Diocesan Authority to decide whether it will lend money to a Parochial Church Council either with or without a bond for repayment. If a bond is given by the Parochial Church Council, it is only legally binding to the extent of property held by the Parochial Church Council and applicable to the purpose for which the money is advanced. (L.B. 9/1925.)

Opinion No. 51.

Power to Accept Loans.

Question.	*Answer.*
1. Has a Parochial Church Council power to accept a loan of money from a private individual, and to covenant for the repayment of such loan over a period of years at an agreed rate of interest?	Yes.
2. Can such a loan be accepted by a Parochial Church Council from one of its own members?	Yes.
3. Is any agreement by a Parochial Church Council to repay any such loan over a period of years binding upon its successors in future years?	Yes, to the extent of monies in their hands as a corporation available for that purpose.
4. Is the consent of the Diocesan Authority required for any such transaction?	No.
5. Is the sanction of the Charity Commissioners required?	No.

(L.B. 16/1926. *See Opinion No.* 52.)

Opinion No. 52.

Borrowing Powers of Church Council.—The power of a Parochial Church Council to borrow money is inferentially recognised and therefore implicitly conferred by the Parochial Church Councils (Powers) Measure, 1921. But the power of the Council to bind its property is limited (Opinions 50, 51 and 53), and if a mortgage is necessary it must be granted by the Diocesan Authority and the consent of the Charity Commissioners secured.

(L.B. 26/1927.)

Opinion No. 53.

Sale or Mortgage of Property.—Whether property is held subject to an express power to sell or mortgage or not, the assent of the Diocesan Authority under section 5 (ii) of the Parochial Church Councils (Powers) Measure, 1921, is not sufficient, but the consent of the Charity Commissioners must also be obtained in order to effect a valid sale or mortgage or equitable mortgage. (L.C. 20/1923.)

Opinion No. 54.

Conveyance of Church Day School and Church Room to Trustees.—Parochial Church Council as Administrative Trustees but not School Managers.

The grantor of land and buildings intended for a Church Day School desired to be advised as to the best form of conveyance in order to facilitate the use of the buildings for other parochial purposes without interfering with the management of the schools and also to secure the reversion of the buildings to the parish in the event of the schools being closed.

It was resolved to advise that—

> All that is desired in the matter can be quite properly carried out by a suitably drawn conveyance to the Diocesan Authority with the appointment of the Parochial Church Council as Administrative Trustees. The Trust would be to use the premises for the usual church room purposes including that of a Church Day School; or it might be for use as Church Day School and subject thereto for usual other mission room purposes, but the Legal Board would prefer the former form. The Administrative Trustees would not as such be Managers of the Day School. There would be three bodies—
>
> (i) The Custodian Trustees (Diocesan Authority),
>
> (ii) The Administrative Trustees (P.C.C.),
>
> (iii) The Managers,
>
> but the last body (the Managers) would only be concerned with the School activities.

It would be just the same if there were no Day School but the Administrative Trustees were able to and did allow the use of the room for a Parochial Club—the Administrative Trustees would not as such be the managers of the club. (L.B. 18/1926.)

Opinion No. 55.

Acquisition of Leaseholds by Parochial Church Council.—Leaseholds are not chattels personal within the meaning of section 5 (i) of the Parochial Church Councils (Powers) Measure, 1921, and must therefore be vested in the Diocesan Authority, which is competent to decide whether it will accept such property or not.

(L.C. 23/1923.)

Opinion No. 56.

Lease by a Diocesan Authority on behalf of a Parochial Church Council.—The main principles and clauses to be included in such a lease were approved in the following form :—

(1) The parties would, as a rule, be (i) the Diocesan Authority, (ii) the Parochial Church Council, and (iii) the Lessee.

(2) The Authority (as owning the legal interest) would be expressed to demise the property, and the Parochial Church Council with the consent of the Authority would be expressed to demise and confirm it to the Lessee.

(3) The Lessee's covenants would be entered into with the Authority and also separately with the Parochial Church Council.

(4) The power of re-entry would be expressed to be in favour of the Authority and the Parochial Church Council according to their respective rights and interests.

(5) Each of them, so far as related to its own acts and deeds, would covenant for quiet enjoyment.

(6) Any other "Lessor's Covenants" would be entered into by the Parochial Church Council "with the consent of the Authority."

(7) The Parochial Church Council should agree to indemnify the Authority in respect of all matters arising out of the transaction other than a breach by the Authority of its covenant for quiet enjoyment. (L.B. 28/1928.)

Opinion No. 57.

Execution of Deeds.—There is no power to vary the requirements of section 3 of the Parochial Church Councils (Powers) Measure, 1921, as regards the execution of instruments executed at a meeting of the Council, *i.e.*, the chairman of the meeting and two other members of the Council must sign, and, if necessary, seal the instrument. The number of transactions requiring formal instruments is not, however, so large as to make these requirements very exacting. (L.B. 7/1925.)

Opinion No. 58.

Relationship between Incumbent and Parochial Church Council.—A diocesan Bishop submitted the following questions, and it was resolved to reply as follows:—

1. If in the judgment of the Bishop a Parochial Church Council is concerned directly to thwart the Incumbent, has the Bishop power in any way to suspend the Council?

Ans. It is not strictly unlawful for the Parochial Church Council to thwart the Incumbent in matters which are not obligatory upon him provided that they do not do so by unlawful means. In no case has the Bishop power to suspend the Parochial Church Council.

2. May an Incumbent resign from the Council, and so separate himself completely from it?

Ans No. He is automatically and *ex officio* a member and cannot resign. No provision is made for his absence except in case of incapacity, and it is there-

fore his duty to attend. (Parochial Church Councils (Powers) Measure, 1921, section 11, and see Rules for the Representation of the Laity, section III, 5.)

3. If a large body of parishioners formally express their dissatisfaction with the electoral roll as an inaccurate document, has the Bishop any power to order a revision subject to such supervision as may secure the satisfaction of the parishioners?

Ans. The electoral roll is revised annually by the Parochial Church Council, and appeal against the allowance or disallowance of enrolment must be made in writing within seven days as prescribed by the R.R.L., section III, 9. Unless there is an appeal, a registered voter remains on the roll so long as his qualification in the parish continues (section III, 1 (1)). Unless there has been some change of circumstances, the qualification must be taken to exist until it is challenged at the annual revision.

4. Is the Parochial Church Council elected for one year or until the election of its successor? In other words, if the Incumbent does not call the annual meeting and the Bishop thinks it inexpedient that it should be called, would the Parochial Church Council lapse until such a meeting were called to reconstitute it?

Ans. Parochial Church Councillors hold office until their successors have been appointed. There is no power in the Bishop or any other authority to cancel or postpone the election of the Parochial Church Council. The Constitution (R.R.L. III, 4) directs that the Annual Parochial Church Meeting shall be held annually in every parish during a certain season. It is the duty of the Incumbent to convene the meeting (III, 5). If he fails to do so, the Bishop may appoint someone else to carry out this duty (V, 2).

Generally.—In view of a special difficulty raised, it was added that every parishioner, rich or poor, has a right to attend his parish church. As regards seating, the Incum-

bent has no right to interfere. It is the duty of the churchwardens, as officers of the Bishop, to seat the congregation. (L.B. 11/1926.)

Opinion No. 59.

*Services in Church—

(1) Under section 6 (v) of the Parochial Church Councils (Powers) Measure, 1921, the Council can make representations to the Bishop with regard to any matter affecting the welfare of the church in the parish. It would be difficult to say that the time or manner of conducting the services did not affect the welfare of the church in the parish.

(2) Notwithstanding the wording of rule 4 in the Schedule to the Measure, matter which is clearly scandalous or entirely outside the functions of the Council need not be put upon the agenda paper.

(3) But rule 9 seems intended and adapted to restrict the ordinary powers of a chairman to rule on nice points of order, and obliges him to put to the meeting any motion of which proper notice has been given, always provided that it is not scandalous or quite clearly outside the province of the Council.

(4) In the present case the motion would appear to be in order as it only suggests to the Incumbent for his decision the course which the Council would desire him to adopt.

(5) The Council has no power to prescribe any change in the services, and the Incumbent is not bound to follow their opinion. (L.C. 24/1924.)

* This opinion, of course, takes no account of the provisions contained in the Prayer Book Measure, 1928, now under consideration by the Assembly.

Opinion No. 60.

Faculties.—The procedure for faculties is determined for each diocese by the Diocesan Chancellor. The Incumbent and churchwardens are generally not only eligible as petitioners,

but the most suitable for that purpose. The views of the Parochial Church Council on any proposals submitted to the Court are usually required, and if the rights of parishioners not belonging to the Church of England are affected (as, for instance, in questions to do with the churchyard, and so forth), a meeting of the Vestry may also be required. The decision of the Diocesan Chancellor and rules made by him are the criterion. (L.C. 10/1922.)

Opinion No. 61.

Maintenance of Churchyard.—An enquiry having been submitted as to the persons responsible for the upkeep of a churchyard where the annual cost exceeded the amount provided by the Parochial Church Council and the Incumbent received fees, it was answered that the responsibility for the upkeep of the churchyard was on the Parochial Church Council, who could not look to the Incumbent to reimburse any part of the expenses out of his fees. (L.B. 27/1928.)

Opinion No. 62.

Maintenance of Closed Churchyards.—By section 18 of the Burials Act, 1855, the power and duty of maintaining closed churchyards is left in the hands of the churchwardens, but they may claim the cost from the rates. By section 6 of the Local Government Act, 1894, if and when any such claim is made after 1894, the above powers and duties of the churchwardens pass for ever in a rural district to the (Civil) Parish Council, and if by an order of the civil authorities the above provisions have been applied to an urban district, then any such claim by the churchwardens in an urban parish transfers the powers and duties to the civil urban authority. The only effect of the Parochial Church Councils (Powers) Measure, 1921, is to substitute the Parochial Church Council for the churchwardens as the ecclesiastical authority concerned.

(L.B. 13/1926. *See Opinion No.* 63.)

Opinion No. 63.

Maintenance of Closed Churchyard.—Enquiry having been made as to whether, in the event of a Parochial Church Council claiming from the Overseers sums expended in keeping "in decent order" parts of a closed churchyard levelled and re-turfed by the Council, the effect would be to hand over the ground, or to give control over it, to the Local Authority, the Board recorded the following opinion, viz.:—

(1)—(*a*) If the parish was not a Rural Parish, and the powers of a Parish Council in this respect had not been transferred by order of the Local Government Board to the Borough Council, the recovering, under section 18 of the Burial Act, 1855, of the costs and expenses of keeping in decent order and repair from the Overseers would not have the effect of handing the ground over to the Local Authority or give it control over it.

(*b*) If the parish was a Rural Parish (*i.e.*, a parish in a rural sanitary district), or if an order had been made of the nature referred to, the effect of claiming payment of the expenses out of the poor rate would be to transfer the obligation of maintaining and repairing the churchyard (involving its control) to the Parish Council or the Local Authority (see sections 6 [1 (*b*)] and 33 of the Local Government Act, 1894).

(2) Under section 18 of the Burial Act, 1855, the costs and expenses were to be repaid out of the poor rate for the parish or place in which the churchyard was situate. This meant the parish or place for which an assessment to poor rates was made.

(3) Although the question had not been asked, it was necessary for its full consideration to consider what were the rights of the Parochial Church Council to recover the expenses which they had incurred mainly (it was presumed) in levelling and re-turfing under a faculty.

It might be said that the Parochial Church Council had so far changed the subject-matter that no claim for repayment could be made. This would not appear to be so, as the Churchyard was still a churchyard. On the other hand, such expenses did not seem to be contemplated by section 18, and it was doubtful whether any of them could be recovered except so far as it could be shown to the satisfaction of the Overseers what expenses would have been necessary to maintain the churchyard "in decent order" if the alterations had not been made. This might be a difficult matter. (L.B. 28/1928.)

Opinion No. 64.

Liability of Incumbents and Parochial Church Councils for Infringement of Copyright at Entertainments.—Almost all modern dramatic and literary and musical compositions are copyright, and care must be taken not to infringe the copyright by public performance without consent of the owner of the copyright. A performance includes any kind of representation or recitation, and it is "public" even though admission is limited to the members of a club or guild.

1. An Incumbent, or anyone else who promotes an entertainment, is liable for any infringement of copyright at the entertainment though ignorant that the work is copyright.

2. He is also liable if he lets premises (or permits the use of them for profit) to anyone who infringes copyright, unless he can prove that he did not know and had no reasonable ground to suspect that there would be any infringement.

3. He should, therefore, in good time, before promoting a public entertainment, procure the owner's consent to performance of copyright work, a consent which is often readily and freely given; and when merely letting or per-

mitting the use of premises for a public performance he should get satisfactory assurances from the promoters of the performance that copyright will not be infringed.

4. In case of inadvertent infringement the extent of liability would depend upon circumstances. Assuming that the inadvertence were established, and an apology offered, and the entertainment were an occasional one at a small village hall, it is unlikely that large damages would be recovered; but in the case of a hall in a town often used or let for entertainments a higher standard of diligence might be expected. If sufficient care is used, there is of course no risk at all.

5. If complaint is made as to infringement of copyright, it will be wise immediately to consult a solicitor. The Legal Board cannot advise in individual cases.

(L.B. 19/1926.)

Opinion No. 65.

Letting of Church Halls for Entertainments.

1. Does a clause in a Trust for the holding of Church Halls, providing for the letting of the hall "for educational and other purposes," come within section 5 of the Parochial Church Councils (Powers) Measure?

2. Would the clause justify the letting of the hall for dances and similar purposes?

Reply.

1. The provision of a dancing hall is not an ecclesiastical purpose within the meaning of the Parochial Church Councils (Powers) Measure, and the clause providing for the letting of the hall for entertainments should be included among the powers of the Trustees and not among the objects of the Trust; but

2. The inclusion of the clause among the objects of the Trusts does not detract from the ordinary power of the trustees to let the hall for any reasonable purpose.

(L.B. 17/1926.)

Opinion No. 66.

Insurance against Fire.—When property is held by a Diocesan Authority on behalf of a Parochial Church Council—

(i) The policies of insurance should be taken out by the Parochial Church Council, who are responsible for paying the premiums.

(ii) The said policies should be in the names of the Diocesan Authority and the Parochial Church Council jointly, and the Diocesan Authority should make this a condition of accepting trusts of property on behalf of a Parochial Church Council.

(iii) The custody of the fire policy should be with the deeds in the hands of the Diocesan Authority or, alternatively, in those of the Parochial Church Council, if this plan were preferred by the latter body. (L.C. 27/1924.)

Opinion No. 67.

Insurance of Private Chapel forming part of a Church.—In the event of a private chapel forming part of a church it is very desirable that arrangements should be made by which a single policy of insurance against the risks quoted be taken out with an insurance company to cover the reinstatement both of the church and of the private chapel, and the premiums distributed proportionately between the parties concerned, namely, the Parochial Church Council and the owner of the chapel.

(L.B. 21/1927.)

Opinion No. 68.

Insurance against Liability for Workmen's Compensation—

(i) An Assistant Curate is not within the Act and need not be insured; neither is a Minor Canon.

(ii) Though circumstances in particular cases might make it unnecessary to do so, all paid *clerks, sextons, Scripture readers, Bible women, teachers,*

organists, choirmen, grave diggers, church cleaners, bellringers, and so forth, should, as a matter of prudence, be insured except in the rare cases where the office, *e.g.*, of parish clerk, is freehold; or where the work is voluntary or casual; or where the work is not manual and the salary exceeds £350.

(iii) *Voluntary workers* cannot claim workmen's compensation, even though given refreshments or gratuities. But a definite agreed payment, even though small, constitutes a contract of service.

(iv) *People employed for charity* occasion some difficulty. Men employed in a Wesleyan labour yard and given board, lodging, and occasional payments, were held outside the Act; but people employed in a rather more systematic way in a charitable institution for the blind were held within it.

(v) *Casual labour* is not entitled to compensation unless employed for the employer's "trade or business." Casual employment is midway between regular employment and employment for a single day. Employment one day a week regularly is not casual, but occasional service such as window cleaning though long continued, unless done under a binding standing agreement, has been held casual. Although in one sense the maintenance of the church, &c., is the business of a Parochial Church Council, we are of the opinion that it is not their "trade or business" within the Act.

Conclusion.—It is impossible to advise as to all the cases which may arise. The above information is given for general guidance, with the caution that in case of doubt it is safer to insure, and in case of proceedings threatened by an uninsured employee to lay the particular facts before a lawyer. (L.C. 27/1924.)

Opinion No. 69.

Health and Unemployment Insurance.—By the Subsidiary Employments Consolidated Order, 1924 (Statutory

Rules and Orders, 1925, No. 423) the following classes of employment are scheduled as excluded from the National Health Insurance Act, 1924, and by the Subsidiary Employments Special Order, 1925 (Statutory Rules and Orders 1925, No. 1323) they are also scheduled as excluded from the Unemployment Insurance Act, 1920 :—

Employment in connection with Religious Worship, &c.

Employment involving part-time service only, in or about a cathedral, church, or other place of religious worship in any of the following capacities :—

Acolyte, beadle, bell-ringer, member of the choir, organ-blower, organist or other musician, sacristan or verger, sexton.

Employment involving part-time service only in any of the following capacities : —

Bible-woman, chapel-keeper, lay preacher or Scripture reader.

The following answers were given by the Legal Board in answer to inquiries about particular employees :—

1. *A parish clerk, whole-time employment, on a fixed stipend.*

As such an officer would presumably be under a contract of service, and be in receipt of a rate of remuneration less than £250 per annum, he would be insurable under both the National Health Insurance Acts and the Unemployment Insurance Acts.

2. *A parish clerk, part-time employment, stipend £8 per annum fixed, plus fees.*

A part-time servant is not, as such, excepted under the S.R. & O. 426 (1915), quoted above. He might, however, be otherwise mainly insurably employed, in which case the main employer would be under obligation to provide insurance contributions by and in respect of him. Alternatively, the fixed stipend, plus the fees, might, having regard to the time occupied in discharging his part-time duties, amount to such a *rate* as to exceed £250 per

annum, in which case he would not be insurable in respect of his part-time employment.

3. *A sexton, part-time employment, fees for grave-digging and burials.*

This is one of a class included in the S.R. & O. 426 (1915), above referred to, as engaged in an "employment specified as being of a subsidiary nature only, and therefore excluded from being employment within the meaning of Part I of the principal Act."

4. *Supposing these persons had not been insured against unemployment and were summarily dismissed for misconduct, are there any penalties falling upon their employers, i.e., the Parochial Church Council, for neglect to insure them against unemployment?*

If there had been failure or neglect (especially wilful) on the part of an employer to provide contributions by and in respect of insurable employees, he would be liable, as regards failure or neglect under the National Health Insurance Act "on summary conviction to a fine not exceeding ten pounds," and to pay to the Insurance Commissioners a sum equal to the amount of the contributions he has so failed or neglected to pay . . . ."

(Section 69 (2) N.I. Act, 1911.)

Further, if failure or neglect, as regards contributions on the part of an employer deprives an employee, who is a member of an approved society, in whole or in part of benefits to which, but for the failure or neglect, the employee would have been entitled, such employee may (section 70 (1)) "take proceedings against the employer for the value of the right of which he has been deprived"; and the employer "may be ordered to pay to the Insurance Commissioners a sum equal to the value so ascertained"; and the Commissioners shall credit the approved society with such sum, and the insured person shall be re-established in his benefit rights.

Proceedings in this latter connection may be taken under section 70 or section 69 "notwithstanding that proceedings have also been taken under the other section in respect of the same failure or neglect to pay contributions."

(Section 70 (2) N.I. Act, Part I, 1911.)

As regards unemployment, failure or neglect on the part of an employer to insure employees who are insurable, or breaches by an employer of the Unemployment Insurance Act, renders the employer liable (section 22 (2) (3) of the Unemployment Insurance Act, 1920) to such a fine and to such liability to the Unemployment Insurance Fund as he is to the National Health Insurance Fund as detailed above.

Opinion No. 70.

General Liability for Accidents.—The Legal Board is sometimes asked as to the liability which a Parochial Church Council might incur for accidents such as the fall of masonry, fire occurring at entertainments, and so forth. The liability of a Parochial Church Council for negligence in such cases is exactly the same as that of anybody else in similar circumstances, and is determined by the common law. Few people think it necessary to insure themselves against liability for such mishaps in their private affairs, but the risk could doubtless be covered for a very small premium if so desired. (L.B. 9/1925.)

Opinion No. 71.

Appointment of Parish Clerk where land is appurtenant to the Freehold Office.—Under section 6 (iii) of the Parochial Church Councils (Powers) Measure, 1921, the power of appointing the parish clerk is vested in the Incumbent and the Parochial Church Council. They can appoint for life or for any less term, and on such conditions as they think proper. The land, however, is no doubt appurtenant to the freehold office, and a clerk appointed for a less term than his life would not be entitled to it. The best course would be for the Incumbent and the Parochial Church Council to apply to the Charity Commissioners for a scheme vesting the land in the Official Trustee of Charity Lands ; placing its management in the hands of the Parochial Church Council, and directing the income to be paid to the person for the time being doing the duties of the parish clerk. (L.B. 18/1926.)

Opinion No. 72.

Control of Parish Clerk and Sexton. — By the Parochial Church Councils (Powers) Measure, 1921, section 6 (iii), the Parochial Church Council and Incumbent are given the power jointly to appoint and dismiss the parish clerk and sexton and their assistants or substitutes, and to determine the conditions of their employment. The rights and duties of such officers, unless specifically defined when the appointment is made, are those ordinarily attaching thereto and cannot be interfered with except by the joint action of Incumbent and Council. Anyone who so interferes commits an ecclesiastical as well as a civil offence. Under section 16 the Bishop may give directions if the Council and Incumbent cannot agree. (L.B. 20/1927.)

Opinion No. 73.

Sexton's Rights in respect of New Public Cemetery. —Under the Burial Act of 1900 a local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, is included in the expression a "burial authority," but that does not make the ground maintained by them a "burial ground provided *under the Burial Acts*" for the purposes of section 32 of the Burial Act, 1852.

To a burial ground provided under the Public Health (Interments) Act, 1879, the provisions of the Cemeteries Clauses Act, 1847, are applied by section 3 of the Act of 1879. Under the Cemeteries Clauses Act no rights are reserved to sextons of ecclesiastical parishes and no compensation given.

The sexton of the parish should be appointed by the ecclesiastical authorities in the ordinary way, and when appointed he will have no rights in respect of the burial ground provided under the Public Health (Interments) Act, 1879, unless the local authority choose to employ him and contract with him accordingly. (L.B. 27/1928.)

Opinion No. 74.

Vestry Clerk.—1. The Vestry books and records do not belong to the Vestry Clerk as they are the records of

the Vestry. The Vestry therefore should retain its own records.

2. The summoning of the Easter Vestry or of a Vestry for other ecclesiastical purposes by the Vicar and churchwardens in the customary form is sufficient. (L.B. 21/1927.)

Opinion No. 75.

Select Vestry.—A select Vestry is either statutory or customary, and its constitution is accordingly determined by statute or custom as the case may be. The Parochial Church Council (Powers) Measure, 1921, has nothing to do with the constitution of a select Vestry; but a churchwarden elected in accordance with that Measure has the same rights as his predecessors otherwise elected, and if he formerly had a statutory or customary right to a seat on the select Vestry that right still remains to him. (L.B. 20/1927.)

Opinion No. 76.

Bishop's Powers and Duties in enforcing the Rules for the Representation of the Laity.—The effect of the numerous decisions on the construction of the word "may" and, more particularly, the effect of the judgment of Lords Cairns and Blackburne in *Julius* v. *Bishop of Oxford* (5 Appeal Cases, 214), is correctly epitomised in Stroud's "Judicial Dictionary" as follows: "Enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right; and if the object of the power is to enable the donee to effectuate a legal right, then it is the duty of the donee of the power to exercise the power when those who have the right call upon him to do so." A parishioner of the Church of England who desires to do so has a legal right to take a certain part in the government of the church and in the allocation of certain money which is at the disposal of the parish, the diocese, and the Church Assembly. If he is deprived of that right by the neglect of those whose duty it is in the first place to effectuate it, then in order to effectuate it (as distinguished from any action for damages or disciplinary proceedings which he may originate) he

must rely either on the action of the Bishop or on mandamus against the Incumbent or other officials who have neglected their duty. The fact that the latter course would be at least embarrassed by the alternative remedy which is in the hands of the Bishop makes it more obligatory on the Bishop to give relief; and the Legal Board is of the opinion that the Bishop is bound to act if requested to do so. But the only way in which this obligation on the Bishop could be enforced would be by mandamus and inasmuch as the issue of that writ is always discretionary it by no means follows that the writ would issue, for regard would be had to all the circumstances of the case.

Apart from local complaint a Bishop might feel that he ought to act under section V (2) in order to embody the legally constituted machinery of the church, but he is not under any legal obligation to do so, and in the absence of some local support it might be a matter for consideration how far any action on his part would be effective.

(L.B. 14/1926.)

iv. INCUMBENT.

Opinion No. 77.

Delegation of Bishop's Authority under section 7 of the Ecclesiastical Dilapidations Measure, 1923.—To prevent certain inconveniences which were brought to the attention of the Legal Board, the Board expressed the opinion that it would be a convenient course if the Bishop in delegating his powers under section 7 of the Dilapidations Measure should reserve to himself the hearing of representations. (L.B. 1 & 2/1924.)

Opinion No. 78.

Dilapidations—Diocesan Scheme.—When the assessments made on an Incumbent are in fact paid for him by a diocesan scheme, the Incumbent is thereby discharged from his liability. Furthermore, if the Parochial Church Council, or the churchwardens, or Diocesan Board of Finance, or any other body or person promises in writing to pay the

Incumbent's assessments, then Queen Anne's Bounty may with the consent of the Diocesan Dilapidations Board postpone recovery of them for twelve months.
(L.C. 27/1924.)

Opinion No. 79.

Dilapidations—Rights of Rector in Chancel.—The rights of a Rector in the chancel are not prejudiced by section 52 of the Ecclesiastical Dilapidations Measure, 1923.
(L.C. 35/1925. *See Opinion No.* 92.)

Opinion No. 80.

Liability of new Incumbent for Repairs (Ecclesiastical Dilapidations Measure, 1923).—As between a new Incumbent and a builder, the former is responsible for payment for repairs authorised by him, even if required to be executed under an order of the Dilapidations Board made on the vacation of a benefice. (L.B. 27/1928.)

Opinion No. 81.

Sale of Glebe Lands.—The Ministry of Agriculture has authority to frame Regulations and Orders governing the sale of glebe lands under the Glebe Lands Acts, 1888, which have statutory authority. In the great majority of cases it is also possible to effect such sales through the agency of the Ecclesiastical Commission, and this is the more satisfactory course for the ecclesiastical owner to adopt. (L.C. 32/1925.)

Opinion No. 82.

Custody of Parochial Documents.—An Incumbent should give reasonable access to Tithe Maps and Apportionments in his custody if requested so to do by an Urban District Council or a (civil) Parish Council, and may be compelled by the County Council to hand over the documents to the District or Parish Council. He may reasonably ask

to take the instructions of the Charity Commissioners before handing over any documents relating to the charities of the parish. A tithe collector's lists and maps are the private property of whoever has made or bought them.

(L.C. 23/1923.)

Opinion No. 83.

Parish Registers—Provision of Register Books.—The Registrar-General must supply two copies of marriage register books, one of which is returnable to him when it is filled up (6 & 7 Will. IV, c. 86). The parish, *i.e.*, formerly the wardens, and now the Church Council, must provide register books for baptisms, burials, and banns, and a dry, well-painted iron chest to keep them in (52 Geo. III, c. 146; and 4 Geo. IV, c. 76).

(L.B. 12/1926. *See Opinions* 84 *and* 85.)

Opinion No. 84.

Parish Registers—Custody.—The Incumbent must keep the registers in the iron safe in some dry, safe and secure place, either in the church, or (if he resides in the parish) in his residence (52 Geo. III., c. 146). The old Canon 70 is obsolete, and the Local Government Act, 1894, does not apply to Church documents.

(L.B. 12/1926.)

Reference may usefully be made to the Report (1927) of the Parish Registers Commission of the Church Assembly [C.A. 227, price 3*d*.]

Opinion No. 85.

Parish Registers—Loss or Damage.—Negligence in the custody of registers is a punishable offence. Civil or criminal proceedings may be taken by churchwardens against anyone who steals or unlawfully removes or detains or injures the registers. (L.B. 12/1926.)

Opinion No. 86.

Income Tax on Offerings made to an Incumbent.—Questions are often addressed to the Board about income tax on offerings made in one form or another to an Incumbent, and the Board has given a good deal of attention to the problem.

The perquisites of an office may vary greatly, but as long as they are perquisites of office they are liable to income tax. Thus the House of Lords has held that Easter offerings are perquisites of an Incumbent and liable to tax. It makes no difference even though the offerings are not handed to the Incumbent but applied for his benefit. The same would apply to any regularly organised fund for the increase of his salary or the discharge of his legal obligations.

There are many ways in which help may be given to anyone without laying him open to income tax on its value, but any organised scheme devised by the Legal Board for the purpose of avoiding the liability to taxation would *ipso facto* defeat its own end, and is therefore impossible.

Opinion No. 87.

Income Tax on Easter Offerings.—The Inland Revenue claim that Easter offerings—*i.e.*, the voluntary offerings, whether collected in church or out of church presented to the Incumbent of a parish under that name—are liable to assessment for income tax, apparently on the ground that they are "perquisites or profits" in respect of the office held by the Incumbent. (Income Tax Act, 1918 section 1 and First Schedule, under Schedule E, Rule 1.)

It was held in a Scotch case (*Inland Revenue* v. *Strang* (1878), 15 Sc.L.R., 704) that a voluntary contribution by parishioners to their clergyman, received by him in respect of the discharge of the duties of his office, must be regarded as an emolument of his office, and was therefore taxable. In an English case (*Herbert* v. *McQuade* (1902), 2 K.B., 631) the Court of Appeal held that a grant from the Norwich Diocesan Branch of the Queen Victoria Clergy Fund (whose grants were intended to be gifts to poor benefices without

regard to the circumstances of the Incumbent) was assessable to income tax on the ground that it was "profit which accrued to the Incumbent by reason of his office notwithstanding that the persons who paid him it were not under any legal obligation to pay it." If the grant had been a gift personal to the Incumbent who received it, the case would not have come within the Income Tax Act; but the facts showed that "the grant was not intended to be a gift to a poor person who happened to be the holder of a poor benefice."

In the case of *Turton* v. *Cooper* (1905), 92 L.T., 863, portions of collections in church had been given to the Incumbent as Incumbent, but would not have been given to him had he not been poor. It was held that the money would have been taxable, although given voluntarily, if given as additional remuneration, but, as in fact it had been given not for that reason, but because, while inadequately remunerated, the Incumbent was "a poor person," and it would not have been given had he been rich, the gift was personal to the Incumbent who received it, and did not accrue to him by virtue of his office. The money was, therefore, not assessable to income tax.

The most authoritative case is that of *Blakiston* v. *Cooper* [1909] A.C., 104. This was a clear case of Easter offerings collected in church on invitation to the congregation to make their offerings "to be handed to the Rector for his personal use as a free-will offering to him personally and all sums given . . . . will be given on that understanding only." The House of Lords, confirming the Court of Appeal, decided that these offerings were taxable. The ground of the decision appeared to be that the sum was given to the Incumbent substantially in respect of his services *as* Incumbent and consequently accrued to him by reason of his office. It would not have been given to him if the recipient had not been Vicar. The sum was an augmentation of the stipend of the recipient in respect of his office, and not the mere extension of charity to the recipient.

It seems, therefore, that as the law stands "Easter offerrings" may sometimes be assessable and sometimes not, and that an Incumbent can probably successfully resist assessment in respect thereof if he can show that they have been made with the intention that he should receive them as gifts

or a collective gift made to him for some personal reasons (as, for instance, because of his poverty as in the third case above mentioned) and not in respect of his office as an augmentation of his income therefrom.

(L.C. 52/1927.)

Opinion No. 88.

Apportionment of Easter Offerings.—It was resolved to record that no claim after retirement for an apportioned part of Easter offerings received at the following Easter could be properly made. (L.B. 26/1927.)

Opinion No. 89.

Rights of Incumbent in Public Cemetery.—An inquiry having been made as to the position of an Incumbent beneficed outside a certain rural deanery, who had been conducting funeral services in the public cemetery within the deanery and had been paid fees without obtaining the consent of the Incumbents of the deanery, it was resolved that the inquirer should be informed of the decision in *Wood* v. *Burial Board of Headingley-cum-Burley* ([1892] 1 Q.B. 713) and should be advised to draw the attention of the Burial Board to this decision, and to request the Board to see that the wrong practice was stopped. It was also considered advisable that the incumbent referred to should be reminded, either by the enquirer or through the Bishop, that he had been committing an ecclesiastical offence, and should be asked to stop the irregular practice forthwith. (L.B. 24/1927.)

Relations between Incumbent and Parochial Church Council.

(*See Opinion No.* 58.)

Opinion No. 90.

Payment to Sequestrators by Queen Anne's Bounty of Tithe Rent-Charge attached to Benefice.—In reply to questions submitted in a case for the Opinion of the Board, it was recorded that the view of Queen Anne's

Bounty, that they could not (without the consent of the new Incumbent) make payments to sequestrators of sums in their hands not distributable before the close of the sequestration, was correct. But the sequestrator had his right of recourse to the new Incumbent for all proper expenditure made by him in excess of the emoluments of the benefice which had actually come into the hands of the sequestrator in respect of the period of sequestration.

The following therefore appeared to be a correct statement of the law, viz., "That if at the time the tithe was distributable by the Governors a new Incumbent had been appointed, he would then be the only person who could give a good discharge to the Governors for the sum distributable, and it would be necessary, therefore, to obtain his consent to pay any part of the monies to the sequestrators."

The following contentions were regarded as not well founded, viz.: (*a*) That sequestrators are persons "for the time being entitled" within the meaning of section 3 (2) of the Tithe Act, 1925, and their claims for the amounts properly expended by them are prior to any possible claims by the new Incumbent; (*b*) that the registration of the writ of sequestration with Queen Anne's Bounty would be sufficient notice to the Governors of the prior claim of sequestrators; (*c*) that sequestrators should not be placed in a worse position than the retiring Incumbent or the representatives of a deceased Incumbent in being paid the amount due to them during the time the living was in their charge and (*d*) that the Governors are not entitled to read into the words "for the time being" in sections 3 (2) and 5 (1) of the Tithe Act, 1925, the meaning "at the particular time we distribute."

The following suggested scheme for advances did not commend itself to the Board for general adoption, viz.: (*a*) That it would be within the legal powers of the Governors to advance tithe to sequestrators for the purpose of meeting the charges they incur by reason of their office; and (*b*) that sequestrators are empowered to give effectual receipts for any such advances.

As regarded the contention that Queen Anne's Bounty might, by regulations made under the Tithe Act, 1925, provide for the payment to sequestrators and for the apportionment of tithe between the persons (including

sequestrators) for the time being entitled thereto, the Board were of opinion that Section 10 of the Tithe Act, 1925, mentions "apportionment" as one of the purposes for which Queen Anne's Bounty is to have full administrative powers, but such "apportionment" is clearly not the apportionment of receipts between persons successively entitled to receive the tithe rent-charge, but is the "apportionment" of tithe rent-charge on separate parts of the lands subject thereto. By Section 10 and the First Schedule to the Act Queen Anne's Bounty are given express power to make regulations with respect to "the periodical disbursement to the persons entitled thereto of the sums received by Queen Anne's Bounty . . . . ," and this, in the Board's opinion, authorises Queen Anne's Bounty to fix dates of payment other than those upon which the tithe rent-charge is received by them. If, in consequence, a sum which, if paid by Queen Anne's Bounty when received from, or when due to be paid by, the landowner, would have been paid to the sequestrators falls to be paid by Queen Anne's Bounty at a time when the sequestrator has ceased to be sequestrator, and his authority as agent has fallen back into the hands of his principal (the new Incumbent), then to that extent the "rights" of the sequestrator are necessarily varied. (L.B. 27/1928.)

v. LAY RECTOR.

Opinion No. 91.

Neglect to Repair Chancel.—Comparatively recent cases in which proceedings have been taken against a lay Rector for neglecting to repair the chancel are reported in the Law Reports (Probate Division) for 1896 and 1898.

Where there are more impropriators than one it is not necessary to make every impropriator a party, but only to prove that the parties prosecuted have received tithes sufficient to do the repairs (Phillimore, *Ecclesiastical Law*, 2nd edition, p. 1417).

The cost of the proceedings are generally taxed rather generously.

A solicitor must always be employed.

If the churchwardens or Council take upon themselves to do the repairs, they do not thereby acquire a right to recover the cost from the lay Rector.

(L.B. 1/1924; L.B. 11/1926.)

Opinion No. 92.

Ecclesiastical Dilapidations Measure, 1923, section 52 (2). Compounding Lay Rector's Liability for Chancel.—The persons who have not compounded for their share of liability for the maintenance of the chancel cannot be compelled to insure or to pay a share of the premium for insurance against fire. If they cannot be induced to insure, or share in the insurance, it would be wise, where some of the persons liable have compounded, for a full insurance to be taken out by the Vicar and Parochial Church Council, whose liability, in fact, extends to the whole cost of maintenance, though they may have a right of contribution from the other persons also liable. The Diocesan Authority, out of the income arising from the sum paid for compounding, would be justified in discharging the premium for the full insurance.

(L.B. 20/1927. *See Opinion No.* 79.)

Addresses presented to His Majesty by the Convocations of Canterbury and York (May, 1919).

Address from the Convocation of Canterbury.

MAY IT PLEASE YOUR MAJESTY,

We, Your Majesty's loyal and faithful subjects, the Archbishop, Bishops, and Clergy of the Province of Canterbury in Convocation assembled, approach Your Majesty with the dutiful assurance of our devotion to Your Throne and Person.

We desire to lay before Your Majesty a recommendation agreed to by both Houses of this Convocation on the 8th day of May, 1919, that, subject to the control and authority of Your Majesty aud of the two Houses of Parliament, powers in regard to legislation touching matters concerning the Church of England shall be conferred on the National Assembly of the Church of England constituted in the manner set forth in the Appendix attached to this Address.

We pray, as in duty bound, that the blessing of Almighty God our Heavenly Father, through our Lord Jesus Christ, may rest upon Your Majesty.

RANDALL CANTUAR:

HERBERT E. RYLE (Bp.),
Prolocutor of the Lower House of the Convocation of Canterbury.

9th May, 1919.

Address from the Convocation of York.

MAY IT PLEASE YOUR MAJESTY,

We, Your Majesty's loyal and faithful subjects, the Archbishop, Bishops, and Clergy of the Province of York in Convocation assembled, approach Your Majesty with the dutiful assurance of our devotion to Your Throne and Person.

We desire to lay before Your Majesty a recommendation agreed to by both Houses of this Convocation on the 7th day of May, 1919, that, subject to the control and authority of Your Majesty and of the two Houses of Parliament, powers in regard to legislation touching matters concerning the Church of England shall be conferred on the National Assembly of the Church of England constituted in the manner set forth in the Appendix attached to this Address.

We pray, as in duty bound, that the blessing of Almighty God our Heavenly Father, through our Lord Jesus Christ, may rest upon Your Majesty.

COSMO EBOR:
President.

W. FOXLEY NORRIS,
Prolocutor.

10*th May*, 1919.

Constitution of the National Assembly of the Church of England.

1. There shall be a National Assembly of the Church of England (hereinafter called "the Assembly") to deliberate on all matters concerning the Church of England and to make provision in respect thereof.

2. The Assembly shall consist of three Houses: the House of Bishops, the House of Clergy, and the House of Laity.

House of Bishops.

3. The House of Bishops shall consist of the members for the time being of the Upper Houses of the Convocations of Canterbury and York.

House of Clergy.

4. The House of Clergy shall consist of the members for the time being of the Lower Houses of the Convocations of Canterbury and York.

5. The members of the Houses of Bishops and Clergy shall continue to be members of the Assembly after the dissolution of the Convocations until the new Convocations come into being.

House of Laity.

6. The House of Laity shall consist of representatives of the Laity of the Provinces of Canterbury and York elected in accordance with the provisions of the Schedule to this Constitution. There shall be an election to the House of Laity every five years at such time as the Assembly appoints, or, in the absence of such appointment, as the Archbishops of Canterbury and York direct.

Meetings of the Assembly.

7. The Assembly shall meet in session at least once a year, and at such times and places as the Assembly provides, or, in the absence of such provision, as the Archbishops of Canterbury and York direct.

Chairman.

8. The Archbishop of Canterbury, or in his absence the Archbishop of York, or in his absence the Bishop next in precedence present and willing to act, shall be chairman of meetings of the Assembly and of the House of Bishops when sitting separately or with another House.

9. The House of Clergy and the House of Laity shall each elect a chairman to preside over them. When they sit together they shall elect a chairman for the occasion.

Voting.

10. Nothing (except what relates only to the conduct of business) shall be deemed to be finally passed by the Assembly which has not received the assent of a majority of the members present and voting of each of the three Houses sitting together or separately; and accordingly at sittings of the Assembly, or of any two Houses—

(1) any motion relating solely to the course of business or procedure shall be determined by a show of hands;

(2) any other motion may be similarly determined unless any ten members present demand a division by Houses, in which case the motion shall be lost unless it is carried by a majority of the members of each House present and voting.

Legislative Committee.

11. The Assembly shall appoint a "Legislative Committee," including members of all three Houses, to whom all Measures which it is desired should pass into law shall be referred. The Legislative Committee shall thereupon take such action as may be authorised by statute in order that such Measure may become law.

Standing Orders.

12. The Assembly may make, revoke or alter standing orders, consistent with this Constitution, for the conduct of elections and for the meetings, procedure and business of the Assembly, and for joint sittings of any two Houses.

13. Subject to this Constitution and to any standing orders from time to time made by the Assembly with reference thereto, the business and procedure at any meeting of the Assembly, or of any two Houses sitting together, or of any House sitting separately, shall be regulated by the chairman thereof.

Functions of the Assembly.

14. The functions of the Assembly shall be as follows:—

(1) The Assembly shall be free to discuss any proposal concerning the Church of England and to make provision in respect thereof, and where such provision requires Parliamentary sanction the authority of Parliament shall be sought in such manner as may be prescribed by statute:

Provided that any Measure touching doctrinal formulæ or the services or ceremonies of the Church of England or the administration of the Sacraments or sacred rites thereof shall be debated and voted upon by each of the three Houses sitting separately, and shall then be either accepted or rejected by the Assembly in the terms in which it is finally proposed by the House of Bishops.

(2) The Assembly or any of the three Houses thereof may debate and formulate its judgment by resolution upon any matter concerning the Church of England or otherwise of religious or public interest:

Provided that it does not belong to the functions of the Assembly to issue any statement purporting to define the doctrine of the Church of England on any question of theology, and no such statement shall be issued by the Assembly.

15. Nothing in this Constitution shall be deemed to diminish or derogate from any of the powers belonging to the Convocations of the Provinces of Canterbury and York or of any House thereof; nor shall the Assembly exercise any power or perform any function distinctively belonging to the Bishops in right of their episcopal office.

16. Any question concerning the interpretation of this Constitution shall be referred to the Archbishops of Canterbury and York and by them decided.

17. In the event of the Assembly receiving statutory powers in regard to legislation, it shall, before entering on any other legislative business, make further provision for the self-government of the Church by passing through the Assembly Measures—

(*a*) declaring that the Convocations of Canterbury and York have power, by canon lawfully passed and promulged, to amend the Constitution of the Lower Houses thereof;

(*b*) conferring upon the Parochial Church Councils constituted under the Schedule to this Constitution such powers as the Assembly may determine.

Rules for the Representation of the Laity

BEING

THE SCHEDULE TO THE CONSTITUTION

OF THE

National Assembly of the Church of England

(As Amended by the Representation of the Laity (Amendment) Measure, 1922, and by the House of Laity Representation Regulation, 1923.)

Section I.

Definitions.

In these rules—

"Qualified electors" means persons entitled to be entered on the electoral roll of a parish.

"Representative electors" means electors who are themselves elected to act in the capacity of electors, and includes teachers and students selected in accordance with these rules.

"Parish" means ecclesiastical parish or district, whether old or new, the minister of which has a separate cure of souls therein, and includes any district within a parish which is constituted a "conventional district" for the cure of souls and has a separate Curate licensed thereto.

"Minister" means the Incumbent, perpetual Curate, or Curate in charge of such parish.

"Ruri-decanal Conferences" means assemblies of clergy and laity elected in the several rural deaneries in the manner hereinafter provided,

and meeting periodically under the presidency of the Rural Dean.

"Diocesan Conferences" means assemblies of clergy and laity elected in the several dioceses in the manner hereinafter provided, and meeting periodically under the presidency of the Bishop.

Words importing residence import an abode of a permanent and not merely of a casual or temporary nature.

Section II.

General Rules.

1. The laity shall meet in Parochial Church Meetings and be represented (i) in Parochial Church Councils, (ii) in Ruri-decanal Conferences where they exist, (iii) in Diocesan Conferences, and (iv) in the House of Laity of the Assembly.

2. All representatives must be actual lay communicant members of the Church of England of twenty-one years of age and upwards, but, except in the case of Parochial Church Councils, need not be qualified electors in the area by or for which they are elected. No candidate may be elected at any election who has not previously consented to serve in the capacity for which he or she is a candidate. All representatives may be of either sex. (*See Opinion* 26.)

Section III.

Parochial Organisation and Elections.

Electoral Roll.

1.—(1) In every parish a roll of electors shall be formed on which persons claiming to be qualified electors in the parish shall, if their claim is allowed, be entered: and they shall remain on the roll so long as their title to be qualified electors in the parish continues. The roll shall be formed in the first instance by the minister and churchwardens (if any), and shall be kept and revised by the Parochial Church Council when it is constituted. It shall be annually revised

not less than twenty-eight days before the Annual Parochial Church Meeting. Notice of such revision shall be affixed at the place or places hereinafter prescribed with respect to notice convening the said Parochial Church Meeting, fourteen days at least before such revision takes place.

(*See Opinions* 26, 37, 58.)

(2) The roll shall be published by being affixed at or near to the principal door of the church in such manner as the Parochial Church Council shall appoint, and the roll shall be open for the enrolment of new voters continuously up to fourteen days before the day of the Annual Parochial Church Meeting.

2. Qualified electors in a parish are the following lay members of the Church of England :—

(1) Persons of eighteen years of age and upwards, of either sex, resident in the parish who—

(i) are baptized and declare that they are members of the Church of England and that they do not belong to any religious body which is not in communion with the Church of England, and

(ii) have signed the declaration set forth in the First Schedule to these rules, and

(iii) are not entered as non-resident electors on the electoral roll of another parish in the same diocese under these rules;

(2) Non-resident electors who, under these rules, are entered on the electoral roll of the parish.

(*See Opinions* 26 *and* 34.)

Non-resident Electors.

3.—(1) A qualified elector in a parish who has during a period of one year preceding the date of application habitually attended public worship in another parish in which he or she does not reside may apply to the parochial officer of such parish to be entered on the electoral roll of that parish instead of on that of the parish in which he or she resides.

(2) The application must be in writing in the form set forth in the Second Schedule to these rules, and must be signed by the applicant.

(3) The application shall be allowed or disallowed, at the first formation of the roll, by the minister and churchwardens (if any), and subsequently by the Parochial Church Council of the parish in which the applicant does not reside, and shall be allowed if the statements contained therein appear to be correct.

(4) When an application has been allowed, the applicant, until the same is cancelled, shall be entered on the electoral roll of the other parish as a qualified elector instead of on that of the parish in which he or she resides, and notice shall be given to the parochial officer of such parish.

(5) If at any time the applicant ceases habitually to attend public worship in the parish in which he or she is enrolled, the entry shall be cancelled by the Parochial Church Council of that parish, and on proof of such cancellation the applicant, if still qualified, may be entered on the electoral roll of the parish in which he or she resides or has become an habitual worshipper.

(6) Any disallowance of an application or cancellation of an entry under this rule shall be subject to appeal to the Appellate Authority constituted by Section III, Clause 9, of these rules.

(7) In this rule "parochial officer" means secretary of the Parochial Church Council or other officer appointed by it for the purpose thereof.

Parochial Church Meeting.

4. In every parish there shall be held annually not later in the year than in Easter week or in the following week the Annual Parochial Church Meeting of qualified and duly enrolled electors of the parish

(1) for electing parochial lay representatives

(i) to the Parochial Church Council of the parish

(ii) to the Ruri-decanal Conference, where it exists, and (*See Opinion* 12.)

(iii) * (subject to the provisions of Section IV, Clause 1, of these rules) to the Diocesan Conference,

the numbers to be elected to the Ruri-decanal Conference and to the Diocesan Conference being such as the Diocesan Conference appoints for the parish; and

(2) for receiving from the Parochial Church Council a copy or copies of the electoral roll and an annual report on its proceedings and on the financial affairs of the parish, all of which shall be open to free discussion before the report is proposed for adoption; and it shall be open to any member of the meeting to ask any question about Parochial Church matters or bring about a discussion of any matter of Parochial or general Church interest by moving a general resolution or by moving to give any particular recommendation to the Parochial Church Council in the fulfilment of its duties. This meeting shall have power to adjourn and to determine its own times of meeting and rules of procedure.

(3) In the case of a parish of which the population does not exceed three hundred, the lay members of the Parochial Church Council shall, if the Diocesan Conference so determines, consist of all such lay persons entered upon the electoral roll as would be eligible for an elected Parochial Church Council. (*See Opinions* 24, 25, 58.)

Convening of Parochial Church Meeting.

5. The meeting shall be convened by the minister of the parish, by notice in the form set forth in the Third Schedule to these rules, and affixed at or near the principal

* The words in brackets were introduced by the Representation of the Laity (Amendment) Measure, 1922, in place of the words "(unless the Diocesan Conference otherwise determines)."

door of the church, or other building licensed for divine service in the parish, for a period including the two Sundays immediately preceding the day of meeting. The meeting shall be held in such place within the parish, and at such date and hour as shall be directed by the Parochial Church Meeting, or the Parochial Church Council, or in the absence of such direction shall be fixed by the minister. * During the vacancy of the benefice and when the minister is incapacitated by absence or illness or any other cause, the vice-chairman of the Parochial Church Council shall have all the powers vested in the minister under this Clause. (*See Opinions* 47, 58.)

Chairman.

6. The convener, if present, and, if not, a chairman chosen by and from among the electors present, shall preside at the meeting, but no clerical chairman shall have a vote (except a casting vote) in the election of the parochial lay representatives. (*See Opinion* 47.)

Elections.

7.—(1) The candidates must, either previously to the meeting, by written notice to the convener thereof, or at the meeting, be nominated by one elector and seconded by another.

(2) If more candidates are nominated than there are seats to be filled, the election shall take place at the meeting, unless a poll is demanded by at least three of the voters present at the meeting.

(3) If a poll is duly demanded, the voters present at the meeting shall forthwith elect a person to preside over it, and the poll shall be conducted in the manner prescribed in the Fourth Schedule to these rules. The expenses of the poll shall be defrayed in such manner as may be directed by the Diocesan Conference.

(4) At every election each elector on the roll shall have

* This sentence was introduced by the Representation of the Laity (Amendment) Measure, 1922.

as many votes as there are persons to be elected, but may not give more than three votes to any one candidate.

(5) Where an equality of votes renders a casting vote necessary to decide the election, it shall be given by the person presiding over the election. (*See Opinions* 27, 28.)

Announcement of Result.

8.—(1) The result of an election shall be forthwith announced by the person presiding over the election, and a notice of the result shall be affixed at the place or places hereinbefore prescribed with respect to notice convening the meeting, and shall bear the date of its being so affixed; and the notice shall be left so affixed for not less than fourteen days; and the result (unless the Rural Dean is himself the person announcing the result) shall be reported in writing to the Rural Dean, or, in the case of there being no Rural Dean, to the Archdeacon.

(2) Any voter shall be entitled to ascertain, by inquiry of the presiding officer, within four days of the declaration of the result, whether his vote has been allowed or not, and a notice that the voters are so entitled shall be appended to all notices announcing the result of the election. (*See Opinions* 29, 30.)

Appeals.

9. Any appeal against the allowance or disallowance of enrolment on the electoral roll, or of a vote, or against the report of the result of the election, shall be made in writing to the Rural Dean or (if there be no Rural Dean) to the Archdeacon within seven days after the date of such allowance or disallowance or the publication of such result, as the case may be. A lay electoral Commission shall be constituted in each diocese by the Diocesan Conference, and any appeal shall be considered and decided by such two or more members of the Commission as the Commission shall appoint, and their decision shall be final.

For the purpose of such consideration and decision, the persons so appointed shall be entitled to inspect the voting papers and all other documents and papers connected with the election, and to be furnished with all information respecting the same which they may require.

(*See Opinions* 5, 9, 58.)

Parochial Church Councils.

10.—(1) The Parochial Church Council shall consist of—

(i) the Incumbent or licensed Curate in charge of the parish;

(ii) the licensed assistant Curate, or the senior licensed assistant Curate where there are more than one, and the churchwardens, being communicant members of the Church of England, and any lay representatives for the parish on the Ruri-decanal Conference and on the Diocesan Conference; (*See Opinion* 31.)

(iii) such number of lay representatives (who may be of either sex) as the Annual Parochial Church Meeting in the first instance decides. The number may be altered from time to time by a resolution passed at such meeting, but so that the alteration shall not take effect until the year following the date at which it is made;

(iv) co-opted members, if the Council so decides, not exceeding in number one-fifth of the elected lay representatives, and being either in Holy Orders or lay communicant members of the Church of England, of either sex, of twenty-one years of age or upwards. (*See Opinions* 32, 33, 35.)

(2) The Incumbent or licensed Curate in charge of the parish shall be chairman.

(3) A lay representative of either sex, or one of the churchwardens if a member of the Council,* shall be elected as vice-chairman. (*See Opinion* 47.)

(4) On representation made to the Archdeacon by a majority of the lay members of the Council, or by one-tenth of the electors on the parochial roll, and deemed by the Archdeacon to show sufficient cause for the same, the

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* The words "or one of the churchwardens if a member of the Council" were introduced by the Representation of the Laity (Amendment) Measure, 1922.

Archdeacon shall convene a special meeting of the Council or the Parochial Church Meeting, and shall either take the chair himself or shall appoint a chairman to preside at such meeting.

(5) At any such special meeting when notice has been given of a motion for any representation to the Bishop relating to the conduct of the Incumbent, the Archdeacon may, in his discretion, request the Incumbent not to be present, but to make a communication in writing to the chairman. If such communication be made, it shall be read to the meeting.

Section IV.

Diocesan Conferences and House of Laity.

Elections to Diocesan Conferences.

*1.—(1) Unless the Diocesan Conference otherwise determines, the lay representatives to that Conference shall be elected in each parish at the Parochial Church Meeting.

(2) In dioceses in which the Diocesan Conference determines that lay representatives to that Conference shall not be elected in each parish at the Parochial Church Meeting, the Diocesan Conference may determine that lay representatives to that Conference shall be elected either—

(i) by the lay representatives in each Ruri-decanal Conference, or

(ii) in some parts of the diocese at the Parochial Church Meeting, and in other parts by the lay representatives in the Ruri-decanal Conference, or

(iii) according to a scheme approved by the Diocesan

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* This Rule was introduced by the Representation of the Laity (Amendment) Measure, 1922, in place of the old Rule, which was as follows :—

"1. In Dioceses in which the Diocesan Conference determines that lay representatives to that Conference shall not be elected in each parish at the Parochial Church Meeting, the lay representatives in each Ruri-decanal Conference shall annually elect such number of lay representatives to the Diocesan Conference as that Conference from time to time appoints."

Conference whereby parishes may be grouped for the purpose of jointly electing lay representatives to that Conference, in which case the Bishop of the diocese shall make rules for the conduct of such elections;

and lay representatives shall be elected accordingly.

(3) The number of lay representatives to be elected to the Diocesan Conference shall in all cases be such as that Conference shall from time to time appoint.

(4) The lay representatives elected to the Diocesan Conference in the year 1922 shall hold office for two years, and the lay representatives thereafter so elected shall hold office for three years.

Elections to the House of Laity.

2. The members of the House of Laity in the Assembly shall be elected every five years by the representative electors in the several Diocesan Conferences according to the principle of Proportional Representation.

3. The representative electors shall be—

(1) The lay representatives for the time being in the several Diocesan Conferences; and

(2) Teachers or students, except such as are in Holy Orders, selected by the lay members of the Diocesan Conference in such manner as may be prescribed by such Conference to represent the Churchmen and Churchwomen of Universities, University or Training Colleges and School Staffs, in the diocese. All the teachers or students so selected shall be for all other purposes members of the Diocesan Conference.

4.—(1) The first elections to the House of Laity shall be held on the basis of the population of each diocese, and the representative electors shall be entitled to elect one member of the House of Laity for every complete 100,000 of the population of the diocese as ascertained at the last decennial census, and one member for an incomplete 100,000.

(2) As soon as the first electoral rolls of all the dioceses are completed, the Assembly shall provide that the number of electors on those rolls shall become the basis of representation to the House of Laity.

(This section applied to the first elections, and contemplated more permanent provisions to be made by Regulations. This has now been done by the House of Laity Representation Regulation, 1923, which runs as follows):—

(1) The number of electors on the electoral rolls of the several dioceses in the Provinces of Canterbury and York, as revised in preparation for the Annual Parochial Church Meeting held in the year immediately preceding the year in which any general election to the House of Laity ought to be held, shall be the basis of representation to the House of Laity for the purposes of that election.

(2) (*a*) In the year immediately preceding the year in which any general election to the House of Laity ought to be held, the number of electors upon the electoral roll of each parish shall be certified to the Secretary of the Diocesan Conference by the Parochial Church Council of the parish not later than the first day of May in the same year; and the total number of electors upon the electoral rolls of each diocese shall be certified to the Secretary of the Church Assemby by the secretary of each Diocesan Conference not later than the first day of July in the same year.

(*b*) The certificate required to be given by the Parochial Church Council under this section may be signed by the chairman, or the vice-chairman, or the secretary of the Parochial Church Council.

(*c*) A copy of such certificate shall be affixed at or near to the principal door of the Church when the original certificate is sent to the secretary of the Diocesan Conference, and shall remain so affixed for a period of not less than fifteen days.

(*d*) Any question arising as to the accuracy of any such certificate shall be decided in such manner as the Diocesan Conference shall appoint.

(3) The number of members of the House of Laity to be elected by each diocese shall be fixed by the Standing Committee of the Church Assembly not later than the first day of November in the same year so as to be as nearly as possible proportionate to the total number of electors certified for each diocese, but so that the total number of the House of Laity shall not be less than 320 or greater than 360.

(4) The number of members of the House of Laity to be elected by each diocese, when fixed by the Standing Committee of the Church Assembly as aforesaid, shall forthwith be communicated to the secretaries of the Diocesan Conferences, and shall be reported to the Church Assembly at its next Session.

5. A Diocesan Conference may for electoral purposes divide a diocese into two or more areas and apportion the number of members of the House of Laity to be elected by the diocese among such areas, and the election shall be conducted in each several area as if such area were a separate diocese.

Conduct of Elections by Representative Electors.

6. At every election of representatives by representative electors the presiding officer shall be—

(1) in the case of a Ruri-decanal Conference, the Rural Dean or a deputy appointed by him;

(2) in the case of a Diocesan Conference, the Bishop of the diocese or a deputy appointed by him;

(3) in the case of a Diocesan Area created under Section IV, Rule 5, such officer as the Bishop may appoint.

7. For every election of representatives by representative electors a meeting of such electors shall be held, at which the names of candidates then or previously nominated by one and seconded by another of the electors shall be received and their consent to serve shall be verified. If more candidates are nominated than there are seats to be

filled, the election shall be decided at the meeting, unless a poll is demanded by at least three of the electors present at the meeting, in which case the election shall be conducted by voting papers sent by post or otherwise delivered to the presiding officer:

Provided that in the case of elections to the House of Laity in any diocese, in lieu of a meeting of electors being held, the names of candidates duly nominated and seconded shall be sent in to the presiding officer on or before a specified date, together with evidence of their consent to serve, and the election shall be conducted by voting papers in like manner as if a meeting had been held and a poll had been demanded.

8.—(1) At every election of representatives for the Ruri-decanal and Diocesan Conferences each elector shall have as many votes as there are persons to be elected, but may not give more than three votes to any one candidate.

(2) In every general election to the House of Laity the election shall be conducted according to the principle of Proportional Representation by the method of the single transferable vote.

(3) The Archbishop of the Province shall draft rules for the holding of an election in accordance with such principle.

Section V.

Supplementary Provisions.

1. Elections to fill up casual vacancies among representatives shall be conducted in the same manner as ordinary elections, a special meeting of the electing body being held, if necessary, for the purpose. Such elections shall, where possible, be held before the representatives are called upon to take part in the election of representatives to another Assembly, which last election shall not be invalidated by reason of any casual vacancies not having been so filled up.

2. In the carrying out of these rules the Bishop of the diocese may, from time to time, make provision for matters not herein provided for, and if from any cause there is neglect or default on the part of any person in carrying out any duty assigned to him by these rules, the Bishop

may appoint any other person to carry out that duty, and may for that purpose extend or alter the time for the election and otherwise vary the procedure thereof as he shall think fit; or, if there has been no valid election, he may order a fresh election and give such directions as may be necessary for the purpose of holding such election.

(*See Opinions* 7, 24, 25, 37, 38, 58, 76.)

THE FIRST SCHEDULE.

Declaration as to Qualification.

I of
declare that I have attained the age of eighteen years and reside in the parish of and am a member of the Church of England and do not belong to any religious body which is not in communion with the Church of England, and that I am not entered as a non-resident elector on the electoral roll of another parish in the same diocese.

THE SECOND SCHEDULE.

I [*full Christian name and surname*] of [*full address of residence*] being a qualified elector residing in the ecclesiastical parish of in the diocese of hereby apply to be entered on the electoral roll of the ecclesiastical parish of in the diocese of instead of that of the said parish in which I reside, and I declare that for the period of one year last past I have habitually attended public worship in the said parish of and I declare that after this application has been allowed, and until it is cancelled, I will not vote for parochial representatives in the above-named parish in which I reside.

Signed

Date

THE THIRD SCHEDULE.

Notice of Parochial Church Meeting.

Parish of

A Church Meeting will be held in on day, the of at p.m. for the election [of parochial lay representatives to the Parochial Church Council and] of parochial lay representatives to the Ruri-decanal Conference and to the Diocesan Conference by the qualified electors upon the electoral roll of the parish, and for the consideration of other parochial Church matters.

Qualified electors duly entered upon the electoral roll of the parish are invited to attend the meeting. Qualified electors in a parish are the following lay members of the Church of England :—

(1) Persons of eighteen years of age and upwards, of either sex, resident in the parish who—

(i) are baptized and declare that they are members of the Church of England and that they do not belong to any religious body which is not in communion with the Church of England, and

(ii) have signed the declaration prescribed in the Rules for the Representation of the Laity, and

(iii) are not entered as non-resident electors on the electoral roll of another parish in the same diocese under these rules ;

(2) Non-resident electors who, under these rules, are entered on the electoral roll of the parish.

Parochial representatives must be actual lay communicant members of the Church of England of either sex of twenty-one years of age and upwards.

THE FOURTH SCHEDULE.

Conduct of Poll at Parochial Elections.

1. The chairman of the meeting shall fix a day (not being less than seven nor more than fourteen days from the day of the meeting) and hours, and a place or places for the taking of the poll; and shall cause a notice of the poll and of the day and hours and place or places thereof signed by himself to be forthwith affixed at the place or places in the rules prescribed with respect to a notice convening the meeting, and the same shall remain so affixed until after the day of the poll. The hours of the poll must not be less than four, which need not be consecutive; but not less than two hours thereof must be before and not less than two hours thereof must be after six of the clock in the afternoon.

2. Votes may be tendered by the voter in person by a voting paper signed by him or her in the form set forth in the Fifth Schedule to these rules, or to the like effect, or by voting papers addressed to the person presiding over the election in the parish, and sent by post or otherwise delivered at the place in the parish fixed for the taking of the poll, and received by him at any time between the holding of the meeting and the hour appointed for the close of the poll. (*See Opinion* 28.)

3. After the close of the poll the votes shall be scrutinised and counted in one place by the presiding officer in the presence of such of the candidates for election, or persons deputed to attend on their behalf, as desire to be present.

THE FIFTH SCHEDULE.

Form of Parochial Voting Paper.

Parish of . I [*full Christian name and surname*] of [*address*], in the ecclesiastical parish of hereby vote for the following as parochial representative of the above-named parish, namely :—

Signed

Date

[N.B.—Only persons on the electoral roll are entitled to vote. They have as many votes in the case of each separate election as there are seats to be filled, but may not give more than three votes to any one candidate.]

(*See Opinion* 28.)

Church of England Assembly (Powers) Act, 1919.

An Act to confer powers on the National Assembly of the Church of England constituted in accordance with the Constitution attached as an Appendix to the Addresses presented to His Majesty by the Convocations of Canterbury and York on the tenth day of May, nineteen hundred and nineteen, and for other purposes connected therewith. [23rd December, 1919.]

WHEREAS the Convocations of Canterbury and York have recommended in Addresses presented to His Majesty on the tenth day of May, nineteen hundred and nineteen, that, subject to the control and authority of His Majesty and of the two Houses of Parliament, powers in regard to legislation touching matters concerning the Church of England shall be conferred on the National Assembly of the Church of England constituted in the manner set forth in identical terms in the Appendix attached to their several Addresses:

AND WHEREAS it is expedient, subject to such control and authority as aforesaid, that such powers should be conferred on the Church Assembly so constituted:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. In this Act— Definitions.

(1) "The National Assembly of the Church of England" hereinafter called "the Church Assembly") means the Assembly constituted in accordance with the Constitution set forth in the

Appendix to the Addresses presented to His Majesty by the Convocations of Canterbury and York on the tenth day of May, nineteen hundred and nineteen, and laid before both Houses of Parliament;

(2) "The Constitution" means the Constitution of the Church Assembly set forth in the Appendix to the Addresses presented by the Convocations of Canterbury and York to His Majesty as aforesaid;

(3) "The Legislative Committee" means the Legislative Committee of the Church Assembly appointed in accordance with the provisions of the Constitution;

(4) "The Ecclesiastical Committee" means the Committee established as provided in section two of this Act;

(5) "Measure" means a legislative Measure intended to receive the Royal Assent and to have effect as an Act of Parliament in accordance with the provisions of this Act.

Establishment of an Ecclesiastical Committee.

2.—(1) There shall be a Committee of members of both Houses of Parliament styled "The Ecclesiastical Committee."

(2) The Ecclesiastical Committee shall consist of fifteen members of the House of Lords, nominated by the Lord Chancellor, and fifteen members of the House of Commons, nominated by the Speaker of the House of Commons, to be appointed on the passing of this Act, to serve for the duration of the present Parliament, and thereafter to be appointed at the commencement of each Parliament to serve for the duration of that Parliament.

Any casual vacancy occurring by the reason of the death, resignation, or incapacity of a member of the Ecclesiastical Committee shall be filled by the nomination of a member by the Lord Chancellor or the Speaker of the House of Commons, as the case may be.

(3) The powers and duties of the Ecclesiastical Committtee may be exercised and discharged by any twelve members thereof, and the Committee shall be entitled to

sit and to transact business whether Parliament be sitting or not, and notwithstanding a vacancy in the membership of the Committee. Subject to the provisions of this Act, the Ecclesiastical Committee may regulate its own procedure.

Measures passed by Church Assembly to be submitted to Ecclesiastical Committee.

3.—(1) Every Measure passed by the Church Assembly shall be submitted by the Legislative Committee to the Ecclesiastical Committee, together with such comments and explanations as the Legislative Committee may deem it expedient or be directed by the Church Assembly to add.

(2) The Ecclesiastical Committee shall thereupon consider the Measure so submitted to it, and may, at any time during such consideration, either of its own motion or at the request of the Legislative Committee, invite the Legislative Committee to a conference to discuss the provisions thereof, and thereupon a conference of the two Committees shall be held accordingly.

(3) After considering the Measure, the Ecclesiastical Committee shall draft a report thereon to Parliament stating the nature and legal effect of the Measure, and its views as to the expediency thereof, especially with relation to the constitutional rights of all His Majesty's subjects.

(4) The Ecclesiastical Committee shall communicate its report in draft to the Legislative Committee, but shall not present it to Parliament until the Legislative Committee signify its desire that it should be so presented.

(5) At any time before the presentation of the report to Parliament the Legislative Committee may, either on its own motion or by direction of the Church Assembly, withdraw a Measure from further consideration by the Ecclesiastical Committee; but the Legislative Committee shall have no power to vary a Measure of the Church Assembly either before or after conference with the Ecclesiastical Committee.

(6) A Measure may relate to any matter concerning the Church of England, and may extend to the amendment or repeal in whole or in part of any Act of Parliament, including this Act:

Provided that a Measure shall not make any alteration

in the composition or powers of duties of the Ecclesiastical Committee, or in the procedure in Parliament prescribed by section four of this Act.

(7) No proceedings of the Church Assembly in relation to a Measure shall be invalidated by any vacancy in the membership of the Church Assembly or by any defect in the qualification or election of any member thereof.

Procedure on Measures reported on by the Ecclesiastical Committee.

4. When the Ecclesiastical Committee shall have reported to Parliament on any Measure submitted by the Legislative Committee, the report, together with the text of such Measure, shall be laid before both Houses of Parliament forthwith, if Parliament be then sitting, or, if not, then immediately after the next meeting of Parliament, and thereupon, on a resolution being passed by each House of Parliament directing that such Measure in the form laid before Parliament should be presented to His Majesty, such Measure shall be presented to His Majesty, and shall have the force and effect of an Act of Parliament on the Royal Assent being signified thereto in the same manner as to Acts of Parliament:

Provided that, if upon a Measure being laid before Parliament the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons acting in consultation, shall be of opinion that the Measure deals with two or more different subjects which might be more properly divided, they may, by joint agreement, divide the Measure into two or more separate Measures accordingly, and thereupon this section shall have effect as if each of the Measures resulting from such division had been laid before Parliament as a separate Measure.

Short title.

5. This Act may be cited as the Church of England Assembly (Powers) Act, 1919.

Parochial Church Councils (Powers) Measure, 1921.

1. In this Measure— Definitions.

The "Church Assembly" means the National Assembly of the Church of England constituted in accordance with the Constitution set forth in the Appendix to the Addresses presented to His Majesty by the Convocations of Canterbury and York on the 10th day of May 1919 and laid before both Houses of Parliament (hereinafter referred to as "the Constitution");

"Council" means a Parochial Church Council constituted in accordance with the Constitution;

The expressions "parish" and "Diocesan Conference" have the same meaning as in the Constitution and the expression "Diocesan Conference" shall include any committee or committees of the Conference appointed for any of the purposes of this Measure;

The expression "Diocesan Authority" means the Diocesan Board of Finance or any existing or future body appointed by the Diocesan Conference to act as Trustees of Diocesan trust property;

The expression "Incumbent" means a Rector Vicar or Perpetual Curate of a parish or the Curate in charge of a parish;

The expression "benefice" comprehends all rectories with cure of souls vicarages perpetual curacies endowed public chapels and parochial chapelries and chapelries or districts belonging or reputed to belong or annexed or reputed to be annexed to any church or chapel and districts formed for ecclesiastical purposes by virtue of statutory authority and includes benefices in the patronage of the Crown or of the Duchy of Cornwall but

does not extend to any of His Majesty's Royal Chapels or to any Royal peculiar nor to any cathedral or capitular preferment or dignity nor to any chapel belonging to any college school hospital inn or court asylum or public or charitable institution nor to any private chapel.

General functions of Council.

2. It shall be the primary duty of the Council in every parish to co-operate with the Incumbent in the initiation conduct and development of Church work both within the parish and outside.

Council to be a body corporate.

3. Every Council shall be a body corporate by the name of the Parochial Church Council of the parish for which they are appointed and shall have perpetual succession. Any act of the Council may be signified by an instrument executed at a meeting of the Council and under the hands or if an instrument under seal is required under the hands and seals of the chairman presiding at the meeting and two other members of the Council.

(*See Opinion* 57.)

Powers transferred to Council.

4.—(1) From the commencement of this Measure there shall be transferred to the Council of every parish—

(i) All powers duties and liabilities of the Vestry of such parish relating to the affairs of the Church except as regards the election of churchwardens and sidesmen and as regards the administration of ecclesiastical charities but including the power of presentation to the benefice of such parish if the right to present thereto is vested in or in trust for the parishioners and the power of making any voluntary Church rate.

(ii) All powers duties and liabilities of the churchwardens of such parish relating to—

(*a*) The financial affairs of the Church including the collection and administration of all moneys which may be raised for Church purposes and the keeping of accounts in relation to such affairs and moneys ;

(*b*) The care maintenance preservation and insurance of the fabric of the church and the goods and ornaments thereof ;

(*c*) The care and maintenance of the churchyard (including a closed churchyard) with all rights now possessed by the churchwardens to recover from the overseers the cost of maintaining a closed churchyard : (*See Opinions* 62 *and* 63.)

Provided that nothing herein contained shall affect the property of the churchwardens in the goods and ornaments of the Church or their powers duties and liabilities with respect to visitations. (*See Opinions* 18, 19, 43.)

(iii) All powers duties and liabilities of the Church trustees (if any) for the parish appointed under the Compulsory Church Rate Abolition Act 1868.

(2) All enactments in any Act whether general or local or personal relating to any powers duties or liabilities transferred by this Measure to the Council from the Vestry churchwardens or Church trustees as the case may be shall subject to the provisions of this Measure and so far as circumstances admit be construed as if any reference therein to the Vestry or churchwardens or Church trustees referred to the Council to which such powers duties or liabilities are transferred by this Measure and the said enactments shall be construed with such modifications as may be necessary for carrying this Measure into effect.

(3)—(i) This Measure shall not affect any enactment in any private or local Act of Parliament under the authority of which Church rates may be made or levied in lieu of or in consideration of the extinguishment or of the appropriation to any other purpose of any tithes customary payments or other property or charge upon property which tithes payments property or charge previously to the passing of such Act had been appropriated by law to ecclesiastical purposes or in consideration of the abolition of tithes in any place or upon any contract made or for good or valuable consideration given and every such enactment shall continue in force in the same manner as if this Measure had not been passed.

(ii) For the purposes of this section "ecclesiastical purposes" shall mean the building rebuilding enlargement and repair of any church or chapel and any purpose to which by common or ecclesiastical law a Church rate is applicable or any of such purposes.

Powers of Council.

5. The Council of every parish shall have power to acquire (whether by way of gift or otherwise) any property real or personal for any ecclesiastical purpose affecting the parish or any part thereof with power to manage and administer any such property:

Provided that—

(i) The power to acquire any such property shall (save in the case of chattels personal) be subject to the consent of the Diocesan Authority and the legal interest in any such property (except chattels personal) shall be vested in the Diocesan Authority of the diocese in which the parish is situate subject to all trusts debts and liabilities affecting the same and all persons concerned shall and are hereby required to make or concur in making such transfers (if any) as are requisite for giving effect to this enactment. (*See Appendices I. and II.*)

(ii) The power of letting for more than one year and of sale and exchange of any such property (other than chattels personal) and the power of taking legal proceedings shall not be exercised without the consent of the Diocesan Authority.

(*See Opinions* 53, 55, 65, 66.)

(iii) The accounts of all trusts administered by the Council shall be laid before the Diocesan Authority annually.

Other powers of Council.

6. The Council of every parish shall have the following powers in addition to any powers conferred by the Constitution or otherwise by this Measure:—

(i) Power to frame an annual budget of moneys required for the maintenance of the work of the Church in the parish and otherwise and to take

such steps as they think necessary for the raising collecting and allocating of such moneys.

(ii) Power to make levy and collect a voluntary Church rate for any purpose connected with the affairs of the Church including the administrative expenses of the Council and the costs of any legal proceedings.

(iii) Power jointly with the Incumbent to appoint and dismiss the parish clerk and sexton or any persons performing or assisting to perform the duties of parish clerk or sexton and to determine their salaries and the conditions of the tenure of their offices or of their employment but subject to the rights of any persons holding the said offices at the date of the commencement of this Measure. (*See Opinions* 71, 72.)

(iv) Power jointly with the Incumbent to determine the objects to which all moneys to be given or collected in Church shall be allocated subject to the directions contained in the Book of Common Prayer as to the disposal of money given at the offertory. (*See Opinion* 43.)

(v) Power to make representations to the Bishop with regard to any matter affecting the welfare of the Church in the parish. (*See Opinion* 59.)

Provisions as to Ecclesiastical Charities.

7.—(1) When the governing body of any parochial charity which is an ecclesiastical charity does not include any persons appointed by the Council of any parish affected thereby the Council of such parish may appoint additional members of such governing body not exceeding the number allowed by the Charity Commissioners in each case who shall hold office for such period not exceeding five years as the Council shall direct.

(2) For the purposes of this section the expression "parochial charity" means a charity the benefits whereof are confined to inhabitants of a single parish but not so as to include rights of patronage vested in trustees by or under any Act of Parliament or scheme or under any decree or order of Court or under any private trust.

(3) The accounts of all parochial ecclesiastical charities shall be laid before the Council of every parish affected thereby.

Council to keep accounts.

8. Subject and in addition to the provisions of section III paragraph 4 of the Schedule to the Constitution every Council shall furnish to the Annual Church Meeting an account made up to the 31st December immediately preceding such Meeting setting out the Council's income and expenditure during the year together with a statement of the funds and property if any remaining in their hands at the date of the account Such account and statement having been duly audited shall together with a report upon the fabric goods and ornaments of the Church be submitted for approval at such meeting or at any adjournment thereof and the said account and statement if approved shall be signed by the chairman of the meeting and shall be forthwith published and affixed on or near the principal door of the church and any other conspicuous place or places in the parish at the discretion of the Council. (*See Opinion* 47.)

Rules of procedure of Council.

9. The Rules of Procedure set forth in the Schedule of this Measure shall apply to all Councils except so far as the same may be varied by any Council with the consent of a central authority appointed for that purpose by the Church Assembly or until such central authority shall have been appointed with the consent of the Diocesan Conference Subject as aforesaid every Council may from time to time make bye-laws regulating their own procedure so that such bye-laws be not inconsistent with this Measure or with the Constitution or with any rules made by the Bishop for carrying this Measure into effect or with any rules hereafter made by the Church Assembly. (*See Opinion* 41.)

Standing Committee of Council.

10. The chairman of the Council and the churchwardens of the parish if members of the Council shall be the Standing Committee of the Council and shall have power to transact the business of the Council between the meetings thereof subject to any directions given by the Council Provided that the Council may by resolution appoint annually other members to serve on the Standing Committee in addition to the chairman of the Council and churchwardens. (*See Opinions* 36, 47.)

11. During the vacancy of the benefice and when the chairman is incapacitated by absence or illness or any other cause the vice-chairman of the Council shall act as chairman and have all the powers vested in the chairman. (*See Opinions* 47, 58.)

Powers of vice-chairman.

12. No proceedings of any Council shall be invalidated by any vacancy in the membership of the Council or by any defect in the qualification or election of any member thereof.

Validity of proceedings.

13. In any parish in which one or more of the churchwardens have been hitherto elected by the Vestry such churchwarden or churchwardens shall be elected by the Vestry and the Parochial Church Meeting sitting together for this purpose Such meeting shall be convened as if it were a Vestry Meeting and be held under the same conditions as to chairmanship voting and demand of a poll as a Vestry Meeting except that every person qualified to vote at such meeting shall be entitled to one vote only (other than the chairman's casting vote) on any question voted on at such meeting or at a poll held in connection therewith The cost of a poll demanded by a candidate shall be borne by him. (*See Opinions* 15, 16, 17.)

Election of churchwardens.

14. The sidesmen of the parish shall be elected annually by the Parochial Church Meeting and the Incumbent and shall have all the rights duties and liabilities heretofore belonging to sidesmen by virtue of their office. (*See Opinions* 20, 21.)

Election of sidesmen.

15.—(1) Without prejudice to existing qualifications any person who is eligible to the Council shall be eligible as churchwarden No person whose name is not on the electoral roll shall be eligible as sidesman but all persons whose names are on the electoral roll shall be eligible.

Qualifications of churchwardens sidesmen and members of Council.

(2) Without prejudice to any ground on which a churchwarden or sidesman may be disqualified or removed under the existing law a person shall be disqualified from being elected or being a churchwarden or sidesman or a member of a Council if a conviction order or finding becomes or has at any time become conclusive against him which if he were a clergyman would render him incapable of holding

preferment under section 1 of the Clergy Discipline Act 1892.

Powers of Bishop.

16.—(1) If any difficulty arises with respect to the summoning holding or conduct of a meeting of the Council for which provision is not made in this Measure or by the Constitution or in the event of a Council and an Incumbent being unable to agree as to any matter in which their joint action is required the Bishop may give such directions as may appear to him to be necessary.

(*See Opinions* 25, 43, 58, 72.)

(2) The Bishop may subject to the provisions of this Measure and the Constitution make rules for carrying this Measure into effect within the diocese and for regulating all matters not dealt with by the Constitution relating to the preparation of the electoral roll.

(3) If any act required by this Measure to be done by any person is not done within such time as the Bishop may consider reasonable it may be done by or under the authority of the Bishop.

Short title and extent.

17.—(1) This Measure may be cited as the Parochial Church Councils (Powers) Measure 1921.

(2) This Measure shall not extend to Scotland or Ireland or to such portions of Wales and Monmouthshire as are subject to the provisions of the Welsh Church Act 1914.

SCHEDULE.

RULES OF PROCEDURE.

Meetings of Council.

1. The Council shall hold not less than four meetings in each year Meetings shall be convened by the chairman and if not more than four meetings are held they shall be at quarterly intervals so far as possible.

Power to call meetings.

2. The chairman may at any time convene a meeting of the Council If he refuse or neglect to do so within seven days after a requisition for that purpose signed by not less than one-third of the members of the Council has been presented to him those members may forthwith convene a meeting.

Notice of meeting.

3. Except as provided in Rule 7 at least ten clear days before any meeting of the Council notice thereof specifying the time and place of the intended meeting and signed by or on behalf of the chairman of the Council or the persons convening the meeting shall be posted at or near the principal door of the Parish Church.

Notice of motions.

4. Notices of motions may be sent in writing to the secretary by any member of the Council at any time Not less than seven days before the meeting a notice thereof specifying the time and place of the meeting signed by or on behalf of the secretary shall be sent to every member of the Council Such notice shall contain the agenda of the meeting including any motion of which notice has been received by the secretary. (*See Opinion* 59.)

Quorum and agenda.

5. No business shall be transacted at any meeting of the Council unless at least one-third of the full number of members are present thereat and no business which is not specified in the agenda shall be transacted at any meeting except by the consent of three-quarters of the members present at the meeting.

Order of business.

6. The business of a meeting of the Council shall be transacted in the order set forth in the agenda unless the Council by resolution otherwise determine.

Short notice for emergency meetings.

7. In case of sudden emergency and other special circumstances requiring immediate action by the Council a meeting may be convened by the chairman at not less than three days' notice in writing to the members of the Council but the quorum for the transaction of any business at such meetings shall be a majority of the then existing members of the Council and no business shall be transacted at such meeting except such as is specified in the notice convening the meeting.

Place of meeting.

8. The meetings of the Council shall be held at such place in the parish as the Council may direct or in the absence of such direction as the chairman may direct.

Vote of majority to decide.

9. Subject to the foregoing rules any motion proposed by any member of the Council present at a meeting shall be submitted to the meeting and shall be decided by a

majority of votes of the members present and voting thereon. (*See Opinion* 59.)

Casting vote.

10. In case of an equal division of votes the chairman of the meeting shall have a second or casting vote.

Minutes.

11. The names of the members present at any meeting of the Council shall be recorded in the minutes and the names of those voting on each question on which a division is taken if the members composing either the majority or the minority so require shall be recorded so as to show how the vote of each member was given Provided nevertheless that the vote on any question shall be by ballot if the meeting so decide.

Adjournments.

12. Any meeting of the Council may adjourn its proceedings to such time as may be determined at such meeting and to any place authorised under Rule 8.

Secretary of Council.

13. The Council may appoint one of their number to act as secretary of the Council without remuneration If no member is appointed so to act the Council shall appoint some other fit person with such remuneration (if any) as they shall think fit The secretary shall have charge of the electoral roll and of all documents relating to current business of the Council He shall be responsible for keeping the minutes shall record all resolutions passed by the Council and shall keep the secretary of the Diocesan Conference informed as to his address. (*See Opinion* 22.)

Treasurer of Council.

14. The Council may appoint one or more of their number to act as treasurer solely or jointly without remuneration and failing such appointment the churchwardens if members of the Council shall act jointly as treasurers. (*See Opinions* 47, 49.)

Power to appoint committees.

15. The Council may appoint committees for the purpose of the various branches of Church work in the parish and may include therein persons who are not members of the Council The Incumbent shall be a member of all committees *ex officio*. (*See Opinion* 47.)

Interpretation.

16. Any question arising on the interpretation of these rules shall be referred to the Bishop of the diocese and any decision given by him or by any person appointed by him on his behalf shall be final.

APPENDIX I.

Foreword to Model Form of Assurance

UNDER SECTION 5 OF THE PAROCHIAL CHURCH COUNCILS (POWERS) MEASURE, 1921.

In recommending this following Model Form of Assurance as a suitable form to be used under Section 5 of the Parochial Church Councils (Powers) Measure, 1921, it may be useful to include a summary of the opinion of Counsel taken as to the proper construction and effect of that section.

COUNSEL ADVISES :—

1. That assurances of property coming within the purview of section 5 should be made to the Diocesan Authority and not to the Parochial Church Council.

2. That the Parochial Church Council should be a party to all such assurances.

3. That the provision of the costs, charges and expenses involved in such assurances should be arranged for before and as an element in considering the consent of the Diocesan Authority.

4. That the Diocesan Authority are entitled to the custody of all deeds and documents relating to the property assured to them.

5. That in the event of Diocesan Authorities accepting assurances of property involving liability (*e.g.*, leaseholds), they could only look to the Parochial Church Council for indemnity when such indemnity had been made a term of their consent to the acquisition of the property, or the Council has otherwise agreed to indemnify them. They will have the usual right of indemnity of trustees against their trust property, but a sale or mortgage for that purpose could only be carried out with the consent of the Charity Commissioners where the property is subject to their

jurisdiction, or of the Board of Education where the property is held for educational purposes only.

6. That assurances of land (other than registered assurances of registered land) must be sent to the offices of the Charity Commissioners within six months after the execution thereof, or within such extended time as the Commissioners may allow, for the purpose of being recorded [Settled Land Act, 1925, section 29 (4)]. Where, however, the land is assured for educational purposes, the assurance must be sent as soon as possible to the offices of the Board of Education in London for record [Education Act, 1921, section 117]. It is thought, however, that this last section only applies to assurances of land for purely educational purposes only.

7. That the Diocesan Authority will not require a licence in mortmain to hold land acquired under the section in question.

8. That by virtue of section 29 of the Settled Land Act, 1925, the land, when vested in the Authority, becomes settled land, and the Authority have, for the purposes of their trusts, the powers given by that Act to a tenant for life or the trustees of a settlement. The exercise of such powers is, however, subject to the same control of the Charity Commissioners or the Board of Education, as before. It may be stated therefore generally that no sale can be made of the property vested in the Authority without the consent of the Charity Commissioners ; and that, while a tenant for life's power of mortgaging is restricted in its scope, it is thought the reference to his powers would not prevent the Authority mortgaging for other purposes with the sanction of the Charity Commissioners, as could have been done before the Act.

In connection with this Model Form it must be remembered that no general form can be relied on to meet all possible circumstances, and it has been thought best to confine it to the more essential features of an assurance under the section. For instance, where documents of title are retained by the Donor or Vendor, the usual statutory acknowledgment and/or undertaking will have to be added.

The Solicitor to the Diocesan Authority will naturally consider the adaptations necessary in every particular case.

Model Form of Assurance

UNDER SECTION 5 OF THE PAROCHIAL CHURCH COUNCILS (POWERS) MEASURE, 1921.

This Conveyance is made the day of 192
BETWEEN A. B. of
in the County of (hereinafter called "the Vendor" or "the Donor" *as the case may be*) of the first part THE PAROCHIAL CHURCH COUNCIL of the Parish of in the Diocese of (hereinafter called "the Council") of the second part and being the DIOCESAN AUTHORITY
or [*C. D. of*
E. F. of
G. H. of
being the persons constituting the Diocesan Authority] of the said Diocese for the purposes of the Parochial Church Councils (Powers) Measure 1921 (hereinafter called "the Authority") of the third part.

Strike out the inappropriate title.

WHEREAS

Recitals of title so far as necessary.

Where the property is acquired by purchase.

AND WHEREAS the Council has in exercise of the powers in this behalf in section 5 of the said Parochial Church Councils (Powers) Measure 1921 (hereinafter called "the said Measure") contained agreed with the Vendor for the purchase from him at the price of £ of the property hereinafter described for the ecclesiastical purposes hereinafter referred to:

Where the property is acquired by way of gift.

Or [AND WHEREAS the Donor is desirous of giving the property hereinafter described to the Council for the ecclesiastical purposes hereinafter referred to and for that purpose of vesting the legal interest therein in the Authority :]

AND WHEREAS the Authority has consented to the acquiring by the Council of such property upon the terms as to indemnity hereinafter contained:

NOW THIS DEED WITNESSETH that [in consideration of the sum of £ to the Vendor now paid by the Council (the receipt whereof the Vendor hereby acknowledges)] *or* [for effectuating the said desire and in consideration of the premises] the [Vendor as Beneficial Owner] *or* [Donor as settlor] in pursuance of the said Measure hereby conveys unto the [1] Authority the property referred to in the First Schedule hereto. TO HOLD the same unto the [2] Authority or [Unto the said (*the persons constituting the Authority*)] in fee simple. [3] Subject nevertheless as in the said First Schedule hereto provided.

[1] Where the Authority is an incorporated body.

[2] Where the Authority is an unincorporated body.

Where the property is leasehold the habendums should be adapted accordingly.

[3] Omit if no reservation &c. in First Schedule.

Insert here any covenants by the Authority with the Vendor or Donor as to fencing or otherwise.

AND IT IS HEREBY AGREED by and between [the Donor] the Council and the Authority as follows namely :—

Where property is purchased this Agreement will be between the Council and Authority only.

1. The said property has been acquired and will be used by the Council for the ecclesiastical purposes in the said Parish referred to in the Second Schedule hereto and for no other purpose [except that in case of a duly authorised sale the proceeds may be used for any ecclesiastical purposes within the meaning of the said Measure affecting the said parish or any part thereof].

The words in square brackets can be inserted if desired.

2. The Council will keep the Authority indemnified in respect of the matters referred to in the Third Schedule hereto and from all costs proceedings claims and demands for or in respect of the same.

IN WITNESS, &c.

Section 29 (4) of the Settled Land Act 1925 applies. The execution by A.B. can be attested in the usual way but the Deed must be sent to the Charity Commissioners within six months from his execution of it for registration.

THE FIRST SCHEDULE ABOVE REFERRED TO.

A description of the property and describing it if necessary as subject to tenancies restrictive stipulations or otherwise including any restrictions as to user the Donor desires to impose.

THE SECOND SCHEDULE ABOVE REFERRED TO.

These are only given as examples of ecclesiastical purposes and should be altered as necessary. Often only (H) will be necessary.

(A) For the celebration of Divine Service in accordance with the rites and ceremonies of the Church of England.

(B) As a School or Schools for the education of children and adults (or children only) the inculcation of the doctrines and principles of the Church of England and the teaching of the Church Catechism being always a fundamental part of the instruction given in such School or Schools and the Headmaster or Headmistress of any such School being always a member of the Church of England.

(C) As a site for or as a Church Chapel Mission or Parish Room Lecture Class or Meeting Room House of Residence for Clergy or Teachers or any other persons engaged in or upon the work of the Church of England or any other buildings to be used in connection with the said work.

(D) As a house or building and premises for Clerical Meetings for Social Conferences of the Clergy for Meetings of District Visitors for Bible Confirmation or Communicants' Classes for Meetings of Committees of any Societies for the promotion or assistance of any ecclesiastical purpose and for Meetings to be called in aid or for the benefit of any such Society.

(E) As a place of meeting for the promotion aiding and furthering in any manner of the work of the Church of England.

(F) As a site for a garden or outbuildings or conveniences to be used and enjoyed in connection with any of the purposes aforesaid.

(G) As a site for an extension of the Churchyard or for any burial ground.

See note above.

(H) For any ecclesiastical purpose within the meaning of the said Measure affecting the said Parish or any part thereof.

THE THIRD SCHEDULE ABOVE REFERRED TO.

(A) All matters of liability subject to which the said property is assured as aforesaid or incident to the property.

(B) All rates taxes insurance premiums and other outgoings of whatsoever nature which may from time to time be payable in respect thereof.

(C) All costs charges and expenses incurred by the Authority in relation to the acquisition or assurance of the said property or as Trustees thereof.

APPENDIX II.

Form of Lease to a Diocesan Authority on behalf of a Parochial Church Council.

For a suggested Form of Lease by a Diocesan Authority on behalf of a Church Council (*see Opinion No.* 56).

This Lease is made the day of 192 BETWEEN A. B. of in the County of (hereinafter called "the Lessor") of the first part [ ] being the Diocesan Authority of the Diocese of *or* C. D. of in the County of E. F. of in the County of and G. H. of in the County of [being the persons constituting the Diocesan Authority of the Diocese of for the purposes of the Parochial Church Councils (Powers) Measure 1921] (hereinafter called "the Authority") of the second part and THE PAROCHIAL CHURCH COUNCIL of the Parish of in the said Diocese (hereinafter called "the Council") of the third part.

WHEREAS the Council in exercise of the powers in this behalf in section 5 of the said Parochial Church Councils (Powers) Measure (hereinafter called "the said Measure") contained has agreed with the Lessor for the grant to them or for their benefit of the lease of the property hereinafter described in manner hereinafter mentioned And the Authority has consented to the acquiring by the Council of such property upon the terms as to indemnity and otherwise hereinafter contained:

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

1. IN consideration of the rent hereinafter reserved and of the covenants by the Council and conditions hereinafter contained the Lessor hereby demises unto the Authority the property referred to in the First Schedule hereto TO HOLD unto the Authority for the term of years from the day of 192 at the yearly rent payable by the Council of £ such rent to be paid by four equal quarterly payments on the usual quarter days in every year the first of such quarterly payments to be made on the day of 192 .

2. IN consideration of such demise to the Authority as aforesaid the Council hereby covenant with the Lessor in manner following that is to say:—

(A) To pay the said rent at the times and in manner aforesaid and also to pay all rates taxes impositions and outgoings whatsoever whether Parliamentary parochial or otherwise which now are or which at any time during the said term shall be imposed or charged upon the said premises or the Landlord or tenant in respect thereof (Land Tax and Landlord's Property Tax only excepted).

(B) At all times during the said term to keep the whole of the said premises (including all fixtures and additions thereto) in good and tenantable repair and condition [and in particular in case any stained glass windows shall be broken forthwith to replace the same with glass of similar pattern and description] and the said premises in good and tenantable repair and condition to deliver up to the Lessor at the expiration or sooner determination of the said term.

This may be necessary in some cases.

(C) To paint with two coats at least of good oil colour and in a proper and workmanlike manner all the wood iron and other work usually painted in and about the said premises as to the outside in the and years of the term hereby granted and as to the inside work during the said term and at the same time to white-

wash that part of the work which is usually white-washed and to paper with paper of a suitable quality such parts thereof as are usually papered.

(D) To permit the Lessor or his agents with or without workmen and others at all reasonable times during the said term at convenient hours in the day-time to enter into and upon the said premises to examine the state and condition thereof and the Council will repair and make good all defects and wants of reparation which the Council shall be liable to make good under the covenants hereinbefore contained of which notice in writing shall be given to them by the Lessor within three calendar months after the giving of such notice.

(E) To keep all sewers drains and boundary fences belonging to the said premises in good tenantable order and condition.

(F) To insure the said premises against fire in the sum of £ in the joint names of the Lessor and the Council in the Assurance Company Limited or in some other well-established office in London to be approved by the Lessor and to keep the same so insured and to pay all premiums necessary for that purpose within seven days after the same shall become due and whenever required to produce to the lessor the policy of such insurance and the receipt for every such payment and to cause all moneys received by the Council by virtue of any such insurance to be forthwith laid out in rebuilding and reinstating such premises.

(G) Except with the consent in writing of the Lessor (which shall not be unreasonably withheld) not to exercise or carry on or permit or suffer to be exercised or carry on upon any part of the said premises any trade or business whatsoever Provided that the same may be used for the purposes of Church work in the parish not involving the opening of any shop or structural alteration to the premises.

(H) Not to assign underlet or part with the possession of the said premises or any part thereof without

the written consent of the Lessor but such consent shall not be unreasonably withheld in the case of a respectable or responsible assignee or tenant.

3. If the said yearly rent of £ or any part thereof shall be in arrear for at least 21 days after any of the days on which the same ought to be paid as aforesaid whether the same shall have been legally demanded or not or if there shall be any breach or non-observance of any of the covenants by the Council hereinbefore contained then and in any such case the Lessor may at any time thereafter into and upon the said premises or any part thereof in the name of the whole re-enter and the same have again repossess and enjoy as in his former estate.

4. THE Lessor hereby covenants with the Council that the Council paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the part of the Council to be observed and performed the Authority shall and may peaceably possess and enjoy the said premises during the said term without any lawful interruption from or by the Lessor or any person rightfully claiming from or under him.

5. THE Authority is to be under no liability for the payment of the rent and observance of the covenants hereinbefore contained or otherwise provided always that on the first assignment of the said premises the assignee shall enter into a direct covenant with the Lessor to perform and observe the covenants and conditions on the part of the Council hereinbefore contained and no assignment shall be deemed to be a permitted assignment until the assignee has executed such covenant.

6. IF the Council shall be desirous of purchasing the reversion in fee simple in the premises hereby demised at the price of £ and shall at any time before the expiration of the said term give to the Lessor a notice in writing of such desire then and in such case the Lessor will sell the said premises to the Council under similar terms as to title as those under which the Lessor purchased and the purchase shall in such case be completed within three months from the date of notice being given.

This may be sometimes desired.

7. WHERE the context allows the expression "the Lessor" and "the Council" used in these presents include respectively the said A. B. his heirs executors and administrators and the Council their successors and assigns.

AND IT IS HEREBY AGREED between the Council and the Authority—

8. THE said property has been acquired and will be used by the Council for the ecclesiastical purposes in the said parish referred to in the Second Schedule hereto and for no other purpose [except that in case of a duly authorised sale the proceeds may be used for any ecclesiastical purposes within the meaning of the said Measure affecting the said parish or any part thereof].

9. THE Council will keep the Authority indemnified in respect of the matters referred to in the third Schedule hereto and from all costs proceedings claims and demands for or in respect of the same.

IN WITNESS, etc.

The ordinary attestation is sufficient, but the Lease must be sent to the Offices of the Charity Commisssioners within six months after execution by the Lessor for the purpose of being recorded in their books.

THE FIRST SCHEDULE ABOVE REFERRED TO.

[DESCRIPTION OF PROPERTY.]

THE SECOND SCHEDULE ABOVE REFERRED TO.

(A) For the celebration of Divine Service in accordance with the rites and ceremonies of the Church of England.

(B) As a school or schools for the education of children and adults [or children only] the inculcation of the doctrines and principles of the Church of England and the teaching of the Church catechism being always a fundamental part of the instruction given in such school or schools and the head-master or head-mistress of any such school being always a member of the Church of England.

(C) As a site for or as a church chapel mission or parish room lecture class or meeting room house of residence for clergy or teachers or any other persons engaged in or upon the work of the Church of England or any other buildings to be used in connection with the said work.

(D) As a house or building and premises for clerical meetings for social conferences of the clergy for meetings of district visitors for Bible confirmation or communicants' classes for meetings of committees of any societies for the promotion or assistance of any ecclesiastical purpose and for meetings to be called in aid or for the benefit of any such society.

(E) As a place of meeting for the promotion aiding and furthering in any manner of the work of the Church of England.

(F) As a site for a garden or outbuildings or conveni-

ences to be used and enjoyed in connection with any of the purposes aforesaid.

(G) As a site for an extension of the churchyard or for any burial ground.

(H) For any ecclesiastical purpose within the meaning of the said Measure affecting the said parish or any part thereof.

THE THIRD SCHEDULE ABOVE REFERRED TO.

(A) All matters of liability arising under this Lease or incident to the property.

(B) All rates taxes insurance premiums and other outgoings of whatsoever nature which may from time to time be payable in respect of the property.

(C) All costs charges and expenses incurred by the Authority in relation to the acquisition or Lease of the said property or as trustees thereof.

APPENDIX III.

Form of Memorandum of Association of Diocesan Board of Finance.

FOREWORD.

This form has been prepared mainly for the purpose of the incorporation of such Boards of Finance and Diocesan Trusts as are not at present incorporated, but will have to be incorporated under the Diocesan Boards of Finance Measure, 1925. Under that Measure (section 1) the Diocesan Conference of every Diocese has to constitute for such Diocese a Diocesan Board of Finance to be registered under the Companies Acts, 1908 to 1917, and whose Memorandum of Association must contain provisions, section 1 (2) (*a*), empowering the Company to hold real and personal property for purposes connected with the Church of England, section 1 (2) (*b*) empowering the Company to perform work and to transact business in connection with the Church and the Diocese and to act as a Committee of the Diocesan Conference, and section 1 (2) (*c*) conferring such further powers on the Company as the Conference may think necessary or expedient in view of the requirements of the Diocese.

Sub-sections (*d*) and (*e*) deal with the constitution of the Company, which will be contained in the Articles of Association.

By section 2, when there is an existing Board of Finance, or, if none, a Diocesan Trust, or any other body which in the opinion of the Conference satisfies the conditions of section 1, the Conference with the consent of the Bishop and the body affected may declare the same to be the Diocesan Board of Finance. Provided that there shall be only one such Board, and the above power is only exerciseable in respect of a body corporate, but an existing

Board of Finance, or Diocesan Trust, which is not a body corporate, may be incorporated and transfer its property to the new Company.

By section 3 the Board in exercising its powers and duties must comply with such directions as may be given to it by the Conference.

By section 4, where an existing Board of Finance or Diocesan Trust does not become the Diocesan Board of Finance under the Measure, the Conference shall, as to such existing Board, and may, as to such existing Trust, provide for the transfer of the property of the existing Board, or the whole, or part, of the property of the Trust to the new Board. The new Board must hold all such property subject to all the Trusts affecting the same.

Clause 3 (G) of the suggested Memorandum of Association complies with section 1 (2) (*a*) of the Measure; Clause 3 (A) with section 1 (2) (*b*) of the Measure; Clause 3 (P) with section 1 (2) (*c*) of the Measure; Clause 3 with section 3 of the Measure; and Clause 3 (C) with section 4 (2) of the Measure.

Clause 3 of the suggested Memorandum will probably require variation according to the particular circumstances of each case, but Clause 3 (Q) and the subsequent Clauses are in the form generally required by the Board of Trade in respect of Associations incorporated otherwise than for profit under section 20 of the Companies (Consolidation) Act, 1908.

THE COMPANIES ACTS 1908 TO 1917.

Memorandum of Association

OF

The ..... Diocesan Board of Finance.

1. The name of the Association in this Memorandum called "the Board" is the Diocesan Board of Finance. — Name.

2. The Registered Office of the Board shall be situate in England. — Registered Office.

3. Subject in the exercise of its powers and duties to such directions as may from time to time be given to the Board by the Diocesan Conference the objects of the Board are:— — Objects.—See s. 3 of the Diocesan Board of Finance Measure, 1925.

(A) To promote aid and further the objects work and business of the Church of England (hereinafter called "the Church") in the Diocese of (whatever for the time being shall be the area of the Diocese called the Diocese of and which area is hereinafter referred to as "the Diocese") and for that purpose to act as a Committee of the Diocesan Conference of the Diocese and to do and carry out or assist in doing and carrying out all such matters and things as are likely to promote or help any of the said objects or work and to organise and provide funds in aid of the said objects and work and in particular for the following essential departments of such work namely:— — See s. 1 (2) of the Measure.

(i) Training for the Ministry;

(ii) Maintenance of the clergy and other persons connected with the ministry or the work of the Church including grants for special purposes;

(iii) Provision of pensions for and the support and benefit generally of ministers teachers and workers of the Church and of persons who have previously held any such positions and of the widows children and dependents of them or any of them ;

(iv) Erection and repair of churches and of buildings of all kinds (whether temporary or otherwise) used or to be used for the purposes of or in connection with any of the objects or work of the Church ;

(v) Education of the young and religious education in all its branches including the maintenance and inspection of religious education in Sunday schools and secondary and elementary schools ;

(vi) Provision of expenses for Diocesan and Central organisations ;

With such additions to the departments aforesaid as from time to time may be expedient for the better carrying forward of the work of the Church.

(B) To promote aid and further the objects and work of the Church or any Province Diocese or branch thereof and whether within or beyond the borders of England or any mission church or body of Christians in community therewith in any part of the world in like manner as the objects and work of the Church in the Diocese may under the provisions hereof be promoted aided or furthered.

Any particular Association whose work the Board is taking over should be specifically mentioned (see also s. 2 (2) of the Diocesan Board of Finance Measure 1925).

(C) To continue and carry on so far as consistent with its objects the work of any Diocesan or other Society or Association in or having relations with the Diocese or any part thereof and to take over its property (subject to any trusts affecting the same) and liabilities or any part thereof and to accept property of any kind and in any form whether from any such Society or Association or other Body or person to be held by the Board upon any trust or for any purposes connected with the Church and coming within the Board's objects and in particular—

(1) Upon any special trusts either then already in existence or newly created.

(2) As bare or passive or custodian trustee.

(3) Upon a general trust for any of the objects of the Board and so that the Board may act either as original trustees or as new trustees of a trust already existing and so that in relation to any trust other than a bare or passive or custodian trust the Board may undertake and exercise all such powers and discretions whether as to the management or administration or otherwise of the property subject to such trusts as may be conferred under or by reason of the said respective trusts and so that in relation to any bare or passive or custodian trust the Board may act without undertaking the management or administration of the property and also that in relation to any of the trusts hereinbefore referred to the Board may act alone or jointly with any other persons or Body and also may (subject to the provisions of any trust taken over or accepted as aforesaid) delegate any of their powers of management and administration to local trustees or a local or other Committee or otherwise as may be deemed most beneficial to the trust.

(D) To co-operate with and assist whether pecuniarily or otherwise any Association or Society trust or charity existing in connection with the work of the Church in the Diocese or elsewhere and to appoint persons whether members of the Board or not to serve on the committee or managing Body of any such Association or Society Trust or Charity and also managers trustees treasurers inspectors examiners local administrators and other officials of any institution whether the same shall be held by or managed by the Board or not and to make grants or donations or loans or annual payments to any such Association or Society Trust or Charity.

(E) To act as executor of any Will and as trustee of any Will or other instrument under or in relation to which the Board is a beneficiary and to nominate

persons to act as trustees for the Board in respect of any of its purposes and to appoint and employ agents and persons in any capacity for the furtherance of any of the objects of the Board.

(F) To raise funds for the purposes of the Board and to deal with the extent and proportions to and in which contributions should or ought to be made by different areas in the Diocese.

(G) Subject to the provisions of section 19 of the Companies (Consolidation) Act 1908 to acquire and hold real and personal property and in particular to purchase hire or otherwise acquire and hold sites for building altering or enlarging and to build alter or enlarge and to maintain furnish equip and endow churches chapels churchyards burial grounds parochial buildings buildings used for church purposes mission halls offices for organisations societies or charities schools colleges residences either with or without gardens or other grounds for ministers or for school masters school mistresses or teachers refuges homes and clubs or other similar buildings and to purchase hire or otherwise acquire and hold alter maintain and furnish suitable premises for the work of the Board or necessary or convenient for its purposes.

(H) To sell mortgage charge lease exchange partition or otherwise deal with any property of or held by the Board and to appropriate or distribute the same for the purposes hereof.

(I) To invest any moneys of the Board whether capital or income in or upon any investment or security or to place the same on deposit with any bank and to manage and if thought desirable accumulate the income of any property of the Board and to apply the property of every kind of the Board or held by them whether capital or income in or towards any of the purposes of the Board including any particular purposes for which the income of such property may be used and applied subject nevertheless to any trusts affecting the same.

(J) To issue debentures or debenture stock re-

deemable or otherwise and raise and borrow any moneys required for the purposes of the Board on such terms and on such security (if any) as may be determined and to act as guarantors in respect to the raising of money for the furtherance of any of the objects of the Board.

(K) To solicit collect and receive moneys and property for any of the purposes of the Board and to issue appeals for financial assistance and to collect publish and circulate statistics and other information and to print and publish leaflets or other matter that the Board think desirable for the furtherance of its objects.

(L) To pay out of the funds of the Board all expenses of or incident to the formation and management of the Board or of administering any special trust or of otherwise carrying out any of the objects herein specified including the payment of stipends salaries pensions or emoluments of persons employed.

(M) To promote or oppose legislative and other measures affecting or likely to affect any of the objects or work of the Board or any body of persons the aid or benefit of which is within the objects of the Board.

(N) To contribute or bear the expenses of any proceeding in any Court and whether in prosecuting or defending the same for the protection of any property or rights of the Church within the Diocese or in anywise affecting the same.

(O) In the event of a partition or alteration of the boundaries of the Diocese to appropriate such part as the Board shall think fit of the property held for the general purposes of the Board to similar purposes within the area by such partition or alteration separated from the Diocese and to make over such appropriated part to the Board of Finance of the Diocese in which such area is comprised or as such Board may direct and to declare the trusts of the property so made over being trusts of a similar nature to those applicable under these presents.

See s. 1 (2) (*c*) of the Diocesan Board of Finance Measure, 1925.

(P) To exercise such further powers in relation to the objects of the Board as the Diocesan Conference of the Diocese may think necessary or expedient in view of the requirements of the Diocese.

This and the following provisions are those generally required by the Board of Trade in the case of Associations not for profit.

(Q) To do all such other lawful things as are incidental or conducive to the attainment of the above objects Provided that (1) the Board shall not support with its funds any object or endeavour to impose on or procure to be observed by its members or others any regulation restriction or condition which if an object of the Board would make it a trade union (2) that in case the Board should take or hold any property subject to the jurisdiction of the Board of Education or Ch rity Commissioners for England the Board shall not sell mortgage charge or lease the same without such authority approval or consent as may be required by law and as regards any such property the members or trustees of the Board shall be chargeable for such property as may come into their hands and shall be answerable and accountable for their own acts receipts neglects and defaults and for the due administration of such property in the same manner and to the same extent as they would as such members or trustees have been if no incorporation had been effected and the incorporation of the Board shall not diminish or impair any control or authority exerciseable by the Chancery Division the Board of Education or the Charity Commissioners over such members or trustees but they shall as regards any such property be subject jointly and separately to such control and authority as if the Board were not incorporated (3) that in case the Board shall take or hold any property which may be subject to any trusts the Board shall only deal with the same in such manner as allowed by law having regard to such trusts.

Application of income and property.

4. The income and property of the Board whencesoever derived shall be applied solely towards the promotion of the objects of the Board as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to the members of

the Board or to any of them Provided that nothing herein shall prevent the payment in good faith of remuneration to any officer or servant of the Board or to any member of the Board in return for any services actually rendered to the Board nor prevent the payment of interest at a rate not exceeding £5 per cent. per annum on money lent or reasonable and proper rent for premises demised or let by any member to the Board but so that no member of the Council of Management or Governing Body of the Board shall be appointed to any office of the Board paid by salary or fees and that no remuneration or other benefit in money or money's worth shall be given by the Board to any member of such Council or Governing Body except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises demised or let to the Board Provided that the provisions last aforesaid shall not apply to any payment to any Railway Gas Electric Lighting or Power Water Cable or Telephone Company of which a member of the said Council or Governing Body may be a member or any other Company in which such member shall not hold more than one-hundredth part of the capital and such member shall not be bound to account for any share of profits he may receive in respect of any such payment.

Alteration of Articles.

5. No addition alteration or amendment shall be made to or in the regulations contained in the Articles of Association for the time being in force unless the same shall have been previously submitted to and approved by the Board of Trade.

Conditions of licence.

6. The fourth and fifth paragraphs of this Memorandum of Association contain conditions on which a licence is granted by the Board of Trade to the Board in pursuance of section 20 of the Companies (Consolidation) Act 1908.

Liability.

7. The liability of the members is limited.

Contributions by members on winding up

8. Every member of the Board undertakes to contribute to the assets of the Board in the event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the Board contracted before the time at which he ceases to be a member and of the costs charges and expenses of winding up the same and for the adjustment of the rights

of the contributories amongst themselves such amount as may be required not exceeding £1.

Application of surplus assets on winding up or dissolution.

9. If upon the winding up or dissolution of the Board there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the members of the Board but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Board and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Board under or by virtue of Clause 4 hereof such institution or institutions to be determined by the members of the Board at or before the time of dissolution or in default thereof by such Judge of the High Court of Justice as may have or acquire jurisdiction in the matter and if and so far as effect cannot be given to the aforesaid provision then to some charitable object.

Accounts and audit.

10. True accounts shall be kept of the sums of money received and expended by the Board and the matter in respect of which such receipts and expenditure take place and of the property credits and liabilities of the Board and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the Board in force for the time being shall be open to the inspection of the members. Once at least in every year the accounts of the Board shall be examined and the correctness of the balance sheet ascertained by one or more properly qualified auditor or auditors.

We the several persons &c.

APPENDIX IV.

Memorandum on the Income Tax Acts, Schedule A Assessments, for the guidance of Clergy and their Agents.

PARSONAGE HOUSES.

Purpose of the Memorandum.

The Legal Committee of the Central Board of Finance have had this matter under consideration and taken Counsel's opinion on certain points, and think that the following statement may be of use to Incumbents of Benefices:—

Difficulties of Assessment.

Parsonage Houses belong to the class of properties occupied by their owners, which present the greatest difficulties to those responsible for assessing the fair annual value thereof for the purposes of the Income Tax Acts, but the Committee are confident that Inspectors of Taxes and the General Commissioners, by whom appeals against assessments are heard, will receive sympathetically all reasonable representations by Incumbents who may feel themselves aggrieved by the provisional assessments.

Notice of Appeal against Assessment.

An Incumbent of a Benefice who is of opinion that the assessment of his Parsonage House has been put at too high a figure should, on receipt by him of the notice of the intended assessment, send to the General Commissioners of Income Tax for his District, addressed to the

Inspector of Taxes as directed in the "Blue Form" of Notice of Assessment, a Notice which may be simply in the following form :—

To H.M. Inspector of Taxes,

.....

.....

Income Tax—Schedule A Assessment,

Parish of.....

No. of Assessment.....

I hereby give notice of appeal against the above-mentioned Assessment, to which I object on the ground that the Rent or annual value assessed and the net amount of Assessment are excessive.

Signature.....

Address.....

.....

Date.....

Preliminary Discussion with Inspector of Taxes.

If in response to this the Inspector of Taxes offers the Incumbent an opportunity of discussing the matter with him this should be taken, and such adjustments may then be made or explanations afforded as may obviate the necessity of proceeding further in the matter.

Objections before General Commissioners.

In order to be in a position to support his appeal before the General Commissioners, which an Incumbent may do personally or by an Agent appointed by him for that purpose, the Incumbent must carefully consider whether his objection is made to the amount of the "rent or annual value assessed" or only to inadequacy of any deductions therefrom as set out in the notice of assessment.

Ordinary Grounds of Objection.

As the principal deduction (for repairs) is a share of the rent fixed by statute, the objection will generally be that the estimated "rent or annual value" is too high.

Against the amount of the rent or annual value assessed an Incumbent is entitled in the first place to make any objection which would be open to a private owner of the same house, if it were owned and occupied by a private individual. This Memorandum is not concerned with the rare case in which the house is actually let to a tenant and a rent is actually being received under an agreement.

In the normal case, where the Parsonage House is occupied by the Incumbent and his family, the general evidence to support an appeal would consist of all facts bearing upon the question of what the house would be worth to be let by the year on the basis of the landlord doing all repairs if it were available for letting. These considerations must differ in every locality, and a local estate agent would probably be best able to assist an Incumbent to evidence bearing on the point from experience in dealing with houses in the district. It will very usually be the case that there will be no sufficiently similar house or houses in the district with which comparison will be possible, but where there is such evidence the Incumbent should before making his appeal ascertain how it bears on his case, for such evidence will naturally weigh heavily with the Commissioners of Income Tax when the appeal is considered.

There will be districts in which a house of the class of the Parsonage House would practically be unlettable on a tenancy by the year except to the Incumbent himself, who is under the necessity of residing in his Parish. In such a case the Incumbent may fairly represent that, as there would be no competition for a tenancy of the house, the "rent or annual value" cannot exceed the amount which he, the only probable tenant, could, having regard to the income of his Benefice, fairly afford and would be willing to give if he were not the owner but were taking the house as a tenant by the year from a landlord who would be responsible for its maintenance in repair.

PARTICULAR GROUND OF OBJECTION.

But over and above any consideration open to a private owner to urge, the Incumbent may *in all cases* fairly remind the Commissioners of Income Tax that owing to the limited tenure of the property by an Incumbent and to the provisions as to letting a Parsonage House contained in the Statute 1 & 2 Vict., ch. 106, sec. 59 (of which a copy is appended), no Incumbent can let his Parsonage House from year to year or otherwise except upon the conditions (1) that the tenancy is absolutely determined upon his ceasing to be Incumbent whether by death, removal to another Benefice, or any other cause of vacation of the Benefice; and (2) that the tenancy is absolutely determined by the Bishop calling upon the Incumbent, as he may do at any time, to go and reside in the Parsonage House.

It is obvious that no tenant taking a tenancy of a Parsonage House under these conditions will pay the same rent which he would be willing to give for an ordinary tenancy from year to year free from such conditions and determinable only by due notice. Therefore the Parsonage House can in no circumstances command so large a rent (that is to say, it can never be worth to be let by the year so much) as the same house if it were not a Parsonage House.

Consequently, it may fairly be contended that the rent or annual value assessed should be less than for the same house if it were in the hands of an ordinary owner.

It would not be unreasonable to say that the letting value of a Parsonage House where it is not practically destroyed by these considerations is reduced (in comparison with the same house if in the hands of an ordinary owner) by 20 per cent or thereabouts.

Looked at in another way, the effect of these restrictions is to reduce the competition for a tenancy of a Parsonage House to that of the Incumbent himself, and the house becomes only worth to be let by the year the amount which the Incumbent himself, having regard to the income of his Benefice, could fairly afford and would be willing to give if he were not the owner but were taking the house as a tenant.

Deductions Allowable.

When after due consideration of these representations a reasonable "rent or annual value" has been assessed, certain deductions prescribed by Statute have to be made to arrive at the "net amount" of assessment.

These consist of (1) the annual amount of the unredeemed land tax (if any); (2) the annual amount of special drainage rates (if any); (3) the average over 21 years of the annual expenditure (if any) for sea-walls or embankment; and (4) the statutory allowance for repairs.

The first (land tax) where it exists is easily ascertained: the items (2) and (3) are quite exceptional: for the item (4) —repairs—the Income Tax Acts prescribe the proportion of the "rent or annual value assessed" which is at present to be deducted as follows:—

Assessment not exceeding £40	Allowance, one-fourth.
Assessment exceeding £40 and not exceeding £100	Allowance, one-fifth (with minimum of £10).
Assessment exceeding £100	Allowance, £20, plus one-sixth of the amount by which the assessment exceeds £100.

The Incumbent will of course see that these deductions are made.

Other Reliefs.

The "net assessment" (*i.e.*, "the rent or annual value assessed" reduced by these authorised deductions) will be the amount included in the Incumbent's total income from his Benefice and the amount upon which Income Tax under Schedule A will be chargeable. But, although not affecting the *assessment* of the House, an Incumbent should bear in mind that in the yearly assessment of the Income Tax with which he is chargeable he is entitled to the benefit of a deduction from the assessment of any profits, fees, or emoluments of what is sometimes called the "study allowance," that is to say, "such part (not exceeding one-eighth) as the Commissioners of Income Tax may allow of the Schedule A *annual value* of the Parsonage House."

Further (if the allowance as above set out in respect of "repairs" seems to be inadequate), the Incumbent may *by way of relief* (but not in the *assessment*) claim repayment of the tax paid by him upon such an amount of his expenditure on the Parsonage House upon "maintenance, repairs, insurance and management" *on the average of the preceding five years* as exceeds the allowance made in the assessment of the House to Schedule A.

Special arrangements have been made by the Inland Revenue Commissioners as to the mode of granting these reliefs to Incumbents of Benefices, and a special form of claim may be obtained by an Incumbent from the local Inspector of Taxes.

EXTRACT FROM 1 & 2 VICTORIA, CH. 106.

Contracts for letting Houses in which any Spiritual Persons required by Bishop to reside to be void.

"LIX. And be it enacted, That any Agreement made for the letting of the House of Residence, or the Buildings, Gardens, Orchards or Appurtenances necessary for the convenient Occupation of the same, belonging to any Benefice, to which House of Residence any Spiritual Person may be required, by order of the Bishop as aforesaid, to proceed and to reside therein, or which may be assigned or appointed as a Residence to any Curate by the Bishop, shall be made in writing, and shall contain a Condition for avoiding the same, upon a Copy of such Order, Assignment or Appointment being served upon the Occupier thereof, or left at the House, and otherwise shall be null and void, and a copy of every such Order, Assignment or Appointment shall immediately on the issuing thereof be transmitted to One of the Churchwardens of the Parish, or such other Person as the Bishop shall think fit, and be by him forthwith served on the Occupier of such House of Residence, or left at the same; and any Person continuing to hold any such House of Residence, or any such Building, Garden, Orchard or Appurtenances, after the day on which such Spiritual Person shall be directed by such Order to reside in such House of Residence, or which shall be specified in any such Order, Assignment or Appointment, and after such Copy shall be so served or left as aforesaid, shall forfeit the sum of Forty Shillings for every Day he shall, without the Permission of the Bishop in Writing under his Hand for that Purpose obtained, wilfully continue to hold any such House, Building, Garden, Orchard or Appurtenances, together with the expense of serving or leaving such Order, Assignment, or Appointment to be

Penalty for holding adverse Possession 40*s.* for every day.

allowed by the Bishop issuing the Order or making such Assignment or Appointment; and it shall also be lawful for the Spiritual Person so directed to reside, or the Curate to whom any such Residence is assigned, to apply to any Justice of the Peace having Jurisdiction in the Place for a Warrant for the taking possession thereof, and the Justice to whom any such Order for such Possession is produced shall and he is hereby required, upon its being duly verified, to grant a Warrant to some Peace Officer to deliver such Possession, and Possession may thereupon be taken of such House under such Warrant at any Time in the Daytime, by entering the same by Force, if necessary without any other Proceeding by Ejectment or otherwise, any Law or Statute to the contrary notwithstanding; provided that any Person who shall have been in possession of any such House of Residence or Premises under a verbal Agreement only, or under any Agreement in which the Condition aforesaid for avoiding the same shall not be inserted, and who shall be turned out of possession by virtue of this Act, shall be entitled to sue the Person with whom he or she had entered into such Agreement for Damages occasioned by his or her being so turned out of Possession, to be recovered in any of Her Majesty's Superior Courts at Westminster."

APPENDIX V.

Memorandum on the Assessment to Income Tax of Incumbents in respect of their Benefices.

AS TO CERTAIN ALLOWANCES CLAIMABLE.

FORM "12 E.C."

(1) Incumbents of benefices make their returns for assessment of income tax on a special form "12 E.C." of which Sections B, C, D deal with the emoluments of their benefice, and the charges payable thereout. The "Notes" issued with the form and to which reference is made by numbers against many of the items of the return should be carefully studied in making the return and will be found to clear up most difficulties. Some further explanations may, however, be found useful.

It is to be borne in mind that the amounts of income, &c., to be entered in the return are those of the year *ended* on the 5th April preceding the date of the return.

TITHES.

(2) The computation of the income from most of the sources set out in Sections B and C of this form needs no explanation; but it may be useful to point out in respect to—

(*a*) Payments in lieu of or compositions for tithes (in Section B),

(*b*) T.R.C. vested in Q.A.B., net annual value (in Section C),

(*c*) T.R.C. (if any) not vested in Q.A.B., net annual value (in Section C),

that under (*a*) no ordinary t.r.c. is to be entered, but only (where these exist) extraordinary t.r.c., corn rents

and compositions for tithes arising from lands and dues and money payments in lieu of tithes (not arising from lands). The Note 9 (*b*) should be read to see what particulars both of receipts and outgoings are required. These payments are for the most part vested in Q.A.B., and, where that is so, the fact should be stated.

All ordinary t.r.c. comes under (*b*) or (*c*), and the amount to be entered is not the net amount collected or received but the net amount of the assessment of the t.r.c. under Schedule A. If this amount be not known to the Incumbent, he should obtain it from the Inspector of Taxes, and he should claim any adjustment arising out of changes since the assessment was made, *e.g.*, by redemptions of t.r.c. and consequent reduction of the income receivable from this source in the year to which the figure relates.

Rectory or Vicarage and Glebe.

(3) The amounts to be entered (in Section C) against the items—

Annual value of Rectory,

Annual value of Glebe,

are explained in Note 16, and are the net amounts of the assessments of these items of income under Schedule A of the Income Tax Act, 1918, or the amount of the rent receivable if less than the assessment. All claims for deductions *specially* relating to these sources of income (*e.g.*, for land tax, and the statutory allowances in respect of repairs) must be made on the *assessment* of them under Schedule A. The deductions claimable in assessment to Schedule A do *not* include assessments made under the Ecclesiastical Dilapidations Measure, 1923, but they do include the statutory deductions (See Appendix IV.) in respect of cost of repairs of houses and lands, which cost or some part of it is in fact represented by the "ordinary" and "long" assessments under the Ecclesiastical Dilapidations Measure, 1923. Additional relief from income tax, Schedule A, in respect of maintenance, repairs, &c., of Parsonage Houses and Glebe by reference to payments made under the Ecclesiastical Dilapidations Measure, 1923,

may be claimed by an Incumbent on a special form (No. 99 E.C.) to be obtained from the Inspector of Taxes.

Assessments under Schedule A make no allowances for rents or tithes which prove irrecoverable. Should tax have been paid on rents or tithes which are ultimately not received (notwithstanding all reasonable steps for collection thereon have been taken), a case may reasonably be put forward for refund of the tax ; but it is impossible here to lay down any general rule as applicable to the treatment of such cases.

General Deductions and "Charges."

(4) The lower portion of Section B of the form "12 E.C." contains a space for—

(i) Particulars of any deductions claimed ;

and Section D provides a place for

(ii) Particulars of any "charges" on official income.

General Deductions.

(5) The general deductions which may be entered under head (i) are set out fully in Note 2 in the inset to the form "12 E.C." under the heading—

Special Deductions granted to Clergymen.

Reference should be made to that Note, and one of the items, viz. :—

(*d*) *Any expenses incurred by him wholly, exclusively and necessarily in the performance of his duty as a clergyman,*

may perhaps with advantage receive some explanation and illustration.

Included in the expenses allowable to an Incumbent are:—

(i) Travelling expenses, if any, necessarily incurred by him in performing his duty of pastoral visitation. Under this head would be included, for instance, the hire of conveyances, or the upkeep of a horse

and trap, or the running cost and wear and tear of a motor-car or bicycle, provided that the wideness of the area to be traversed necessitated the employment of such means for the proper performance by the Incumbent of the duties of his office. Where the horse and trap, motor-car or bicycle is used partly for such necessary purposes and partly for other purposes, only a proportionate part of the total cost would be allowable.

(ii) Travelling expenses incurred in attending Convocation as a Proctor, in attending the National Assembly as a member of the House of Clergy, or in attending Diocesan Meetings or other assemblies where this is not merely voluntary, but under injunction from superior ecclesiastical authority.

The expenses of an Incumbent as Rural Dean (a separate office) cannot be claimed as a deduction from the income of his benefice.

(iii) Out-of-pocket expenditure on stamps, stationery, telephone, telegrams, &c., necessarily incurred in the performance by the Incumbent of the duties of his office.

(iv) Out-of-pocket expenditure incurred in the provision of a *locum tenens* during an illness which incapacitates the Incumbent from performing his duties personally. (No allowance is permissible for a *locum tenens* during holidays.)

(v) In some circumstances an Incumbent may claim an allowance in respect of the cost of a servant at the parsonage house if necessarily employed by him upon services arising out of his parochial work. Useful (but not necessarily the only) tests of this are:—Upon what duties is the servant employed? Would it be reasonable to suppose that the servant would not be employed or the staff of servants or cost of servants would be reduced if it were not for the duties arising out of the parochial work of the Incumbent?

It is obvious that the Incumbent making a claim for deductions under head (*d*) such as those specified must be prepared to justify the amounts claimed, and he will be

able most conveniently to do this by submitting to and discussing with the Inspector of Taxes the particulars of the disbursements upon which his claim is founded.

Study Allowance.

In regard to another deduction—(*e*) in the Note, sometimes called the "study allowance"—nothing beyond one-eighth of the rent or one-eighth of the annual value (not of the net assessment) under Schedule A of the residence house is allowable, notwithstanding that there may be expenses, *e.g.*, for servants, rates, wear and tear of furniture, lighting, heating, &c., attendant upon the partial use of the residence house for official purposes.

Charges.

(6) The "charges" to be entered in Section D of the form "12 E.C." need little explanation. The Note number 20 in the inset should be read.

The "charges" more generally occurring are—

(*a*) Interest paid on mortgages to Queen Anne's Bounty;

(*b*) Payments out of the Incumbent's emoluments to licensed curates, &c.;

(*c*) Payments in respect of a pension to a retired predecessor in the incumbency; and

(*d*) Payments of charges on the benefice in favour of other benefices.

As regards (*b*), the deduction extends to any payments out of the Incumbent's emoluments to a *licensed* lay worker (*e.g.*, a licensed diocesan reader, parochial reader, or deaconess) employed to assist in the performance of the Incumbent's spiritual duties. Nurses, health visitors, relief assistants, &c., are not within the allowance.

APPENDIX VI.

Memorandum as to Receipts for Charitable Contributions.

STAMP DUTY.

The following are three published statements on the question of the exemption (legal or practical) from Stamp Duty of receipts or acknowledgments given for contributions to charities:—

> " A receipt for a donation or subscription to an institution totally devoted to charitable purposes enjoys a practical exemption from duty, as the Commissioners do not enforce a penalty if it is given unstamped "—(*Alpe's Law of Stamp Duties*, 18th edn. [1925], p. 230.)

> " Receipts for charitable contributions are liable to duty." —(*Solicitors' Diary* [1928], p. 734.)

> " In practice the Commissioners of Inland Revenue do not require receipts by charitable institutions for contributions to be stamped."—(*The Laws of England*, Vol. 4, " Charities," p. 215, para. 381.)

None of these statements is complete or affords help to distinguish (if it is necessary to distinguish) between two classes of acknowledgment of this character, viz.:—

> *Class I.*—The acknowledgment given by the charitable institution or the immediate recipient for the benefit of the charitable institution, directly to the donor of the contribution.

> *Class II.*—The acknowledgment of a contribution or an aggregate of contributions to the charitable institution given by the institution to the officer of a local association for raising funds or other intermediary who, having received contributions from actual donors, transmits them to the institution.

The strict law is, in fact, modified in practice.

The law is to be found in the following provisions of the Stamp Act of 1891 :—

STAMP ACT, 1891.

First Schedule.—Stamp Duties on Instruments.

	£	s.	d.
Receipt given for or upon payment of money amounting to £2 or upwards	0	0	1
(now ...	0	0	2)

Section 101, *Sub-section* (1).

"For the purposes of this Act the expression 'receipt' includes any note, memorandum or writing whereby any money amounting to £2 or upwards, or any bill of exchange or promissory note for money amounting to £2 or upwards, is acknowledged or expressed to have been received or deposited or paid or whereby any debt or demand or any part of a debt or demand of the amount of £2 or upwards is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment and whether the same is or is not signed with the name of any person."

It is quite clear from these provisions (and if it were not clear from the liberal construction of the words there is plenty of authority to show) that the fact that a payment made is voluntary or for a charitable object does not exempt the receipt given for it (if a written receipt or acknowledgment of any kind is given) from *legal* liability to be stamped with the "receipt" duty stamp.

This is sufficiently shown by the decision in the case of *The General Council of the Bar (England)* v. *Inland Revenue Commissioners* ([1907], 1 K.B., 462) that stamps were required upon receipts given to solicitors for those purely voluntary payments or gifts commonly known as counsel's fees.

The receipts in question had been given (1) by counsel's initials on his brief; (2) by signature of a statement of fees.

In the course of his judgment in this case Bray, J., observed :—

"The word 'received' is not necessarily to be read as

connoting an obligation created or discharged nor would that be its natural construction.

"It is said that if I do not so construe it it will make all receipts for charitable gifts and subscriptions and for presents liable to duty. I am inclined to think that is so if the documents are given as receipts . . . . If the person making the gift or sending the subscription requires a receipt, it must be because he looks upon the transaction for some reason as a business transaction; it might be because he has to account to someone else, and he wants a voucher, *i.e.*, a business document."

While this is the law, the practice is more lenient towards charitable donations and subscriptions. It will be found that the practice of the Inland Revenue Commissioners in relation to receipts given for payments of those kinds is not to require such receipts to be stamped when they may be regarded as other than "business documents."

The acknowledgment given to a donor for a payment of the amount of his gift from his own money need not be regarded as a "business" document (though in some circumstances even this might come under this classification). On the other hand a receipt or acknowledgment given to a local collector who in discharge of the trust imposed in him pays over to a charity any contribution or sum of contributions that has been entrusted to him to remit to the charity must be presumed to be a business document. The intermediary needs to have the document for the purpose of any audit of his accounts or as a voucher to prove in any other circumstances that he has executed his trust.

Therefore for amounts of £2 and upwards receipts under Class I need not be stamped.

Receipts under Class II ought to be stamped.

Class II. would include the receipt given to a Vicar sending up to a charity the proceeds of a collection in church.

The receipt given for a pew rent cannot be classed among receipts for voluntary payments: the payment is made pursuant to a contract.

APPENDIX VII.

Trusts (Parochial and other) for Purposes connected with the Church of England.

1. There are now several constituted bodies and classes of bodies capable of accepting, holding, and administering special and general trusts for Church of England purposes, and their several capacities are so extensive that on the creation of any new trust of this character it will generally be found that one or other of these existing bodies is suitable to be constituted the trustee without the necessity of setting up special trustees.

2. Among these bodies are the Central Board of Finance of the Church of England, the Diocesan Boards of Finance and Diocesan Trusts, and the Parochial Church Councils.

3. The Central Board of Finance has power to accept trusts of every variety for purposes connected with the Church of England whether as custodian trustee or administering trustee, and it is the appropriate body for trusts which are neither purely diocesan nor parochial. The Diocesan Boards of Finance are the appropriate bodies within their respective dioceses for purely diocesan or parochial trusts, but in some dioceses there are Diocesan Trusts which in this matter have, and may continue to have, equal power and authority.

4. The capacity of the Parochial Church Councils is determined by the Parochial Church Councils (Powers) Measure, 1921. They are bodies corporate (section 3), and they have (section 5) power (subject to the consent of the Diocesan Board of Finance or other Diocesan Authority) to acquire (whether by way of gift or otherwise) any property, real or personal, for any *ecclesiastical* purpose affecting the parish or any part thereof, with power to manage and administer any such property. The Parochial Church Council is, therefore, the suitable body to be constituted trustee for an ecclesiastical charity

limited in operation to the parish. But the Parochial Church Council must for this purpose call in aid the Diocesan Board of Finance or other Diocesan Authority *first* to receive its consent to the acquisition of any property for the purpose of the trust, and, *secondly*, that the Diocesan Board or Authority may become the custodian trustee of such property; as it is enacted by section 5 (i) of the Parochial Church Councils (Powers) Measure, 1921, that any such property acquired by the Parochial Church Council shall be vested in the Diocesan Authority. The "Diocesan Authority" is defined by section 1 of the Measure to be the Diocesan Board of Finance *or* any body appointed by the Diocesan Conference to act as Trustees of Diocesan trust property.

The Parochial Church Council is not capable of accepting a conveyance of land.

The Central Board of Finance has published for guidance a Model Form of Assurance to a Diocesan Authority of property acquired by a Parochial Church Council for the purposes permitted by the Measure.

5. So far this Memorandum has dealt with the creation of new trusts for purposes connected with the Church of England. There are, however, large numbers of existing trusts of this character vested in special trustees or bodies other than those which have been mentioned, and the question sometimes arises as to the transfer of these trusts to one or other of the bodies above mentioned. There is no power in any of these bodies to *compel* the transfer to itself of any such trusts. As to any trusts within its capacity to hold, any one of these bodies may accept a transfer to itself of any such existing trust, provided that the existing trustees desire so to transfer their trust and have authority or, by order of the Charity Commissioners or otherwise, obtain authority to make the transfer. Where it is desired in any case to take this course, the objects of the trust and the terms of the trust, and the powers thereby given to the trustees (*e.g.*, of appointing new trustees) and the nature of the discretion which the trustees are called upon to exercise, must be examined, and no general statement as to the power to transfer can usefully be made.

6. With regard to one class of charitable trusts, viz.,

" parochial charities which are ecclesiastical charities," there is a special provision in the Parochial Church Councils (Powers) Measure, 1921 (section 7), that (without any transfer of the trust from existing trustees) the Parochial Church Council may obtain representation on the trust by " appointing additional members of the governing body of any such trust not exceeding the number allowed by the Charity Commissioners in each case."

7. It may be useful to point out that, except as to sites for " non-provided " schools and appurtenant playgrounds, &c., conveyed under the School Sites Acts (and sometimes as to burial grounds and other properties under local or private Acts) the " Vicar and churchwardens " of a parish are not a corporation to accept conveyances of land. Conveyances for the purposes of the School Sites Acts are not necessarily made to the Vicar and churchwardens, and now that there are other suitable bodies of trustees to which sites may be conveyed on trust for the purposes of schools and the other ecclesiastical and parochial purposes for which Church school buildings are generally intended to be used, it is frequently desirable that such sites should not be conveyed to Vicar and churchwardens.

8. With regard to trusts which Diocesan Boards of Finance or Diocesan Trusts are asked to accept (whether on their creation as new trusts or by way of transfer of existing trusts) it is probable that in most cases these bodies have no power to accept (and, even if they had the power, it would be highly undesirable that they should accept) charitable trusts which are substantially non-ecclesiastical, whether they relate to a parish or a larger area. In this connection the provisions of the Local Government Act, 1894 (56 & 57 Vict., ch. 73), should be carefully considered. Section 14 of that Act has made detailed provisions with regard to parochial charities which are not ecclesiastical charities, and several of these provisions (*e.g.*, as to additional members representative of the Parish Council being placed upon the governing body of the charity) are quite inconsistent with the administration of such trusts by Diocesan Boards of Finance or Diocesan Trusts, and would be very embarrassing to such bodies if they were applied : while as to the custodian trusteeship of such charities, there can be no reason why it

should be undertaken by those bodies (even if within their powers), seeing that the Official Trustee of charitable lands and the Official Trustees of charitable funds are able to undertake such custodian trusteeship.

"Ecclesiastical charities" (which are excluded from the operation of section 14 of the Act referred to and to which the foregoing observations in this paragraph do *not* apply) are defined in section 75 of the Act as follows :—

> "The expression 'ecclesiastical charity' includes a charity the endowment whereof is held for some one or more of the following purposes :—
>
> (*a*) for any spiritual purpose which is a legal purpose ; or
>
> (*b*) for the benefit of any spiritual person or ecclesiastical officer as such ; or
>
> (*c*) for use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by any particular church or denomination ; or
>
> (*d*) for the maintenance, repair or improvement of any such building as aforesaid, or for the maintenance of divine service therein ; or
>
> (*e*) otherwise for the benefit of any particular church or denomination, or of any members thereof as such.
>
> Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act ; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.
>
> The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination."

APPENDIX VIII.

Parochial Accounts

UNDER THE PAROCHIAL CHURCH COUNCILS (POWERS) MEASURE, 1921.

1. No Longer Churchwardens Accounts.

By the Parochial Church Councils (Powers) Measure, 1921, there were in effect transferred from the churchwardens and vested in the Parochial Church Council all powers and duties as regards the maintenance of church fabric and the payment of church expenses, and also the power, jointly with the minister, to dispose of all money collected in church (except the Communion offertory which is still disposed of as the rubric directs, that is to say, by the minister and wardens). The church accounts, therefore, which were formerly the churchwardens' accounts, are now the accounts of the Parochial Church Council, and should always be so described.

2. Treasurer of the Council.

The Parochial Church Council may appoint anyone it likes as treasurer. But the churchwardens act as treasurers of the Parochial Church Council (*a*) when they are so appointed by the Parochial Church Council; or (*b*) when the Parochial Church Council does not appoint anyone else as treasurer, in which case the wardens act as *ex officio* treasurers to the Council. But if the wardens happen in either of these ways to become treasurers to the Parochial Church Council, their powers and duties in that capacity are neither more nor less than those of anyone else who may be appointed to the office of treasurer, and in keeping the church accounts they do not act as churchwardens, but as treasurers to the Council in whose name the accounts must be kept. There are no longer any churchwardens' accounts, unless the churchwardens happen to have some special fund or charity or trust property entrusted to them, or in the unlikely event of their opening a special account for the Communion offertory.

3. Accounts.

The Church accounts should according to the Measure be kept for the calendar year ending 31st December, and, strictly speaking, should be made up on income and expenditure, *i.e.*, they should show not only receipts and payments, but also—

(i) Money due but not received ;

(ii) Moneys owing but not paid ;

(iii) Moneys prepaid on account of the following year ; and

(iv) Moneys received but not due until the following year.

It will, however, be sufficient if the accounts are kept in any way that makes the financial situation clear. It is desirable that the auditor should be appointed at the same Parochial Church Meeting that appoints a Parochial Church Council, and in any case the accounts must be audited before they are presented to the Parochial Church Meeting next following the end of the financial year, and, as approved by the meeting, they must be exhibited on the church door or some other suitable place.

4. Statement of Funds and Property.

A balance sheet, though sometimes desirable, is not required by the Measure. But the Measure does require that an accurate record of the funds and property of the church should be kept by the Council and presented to the annual Parochial Church Meeting.

5. General Observations as regards the application of Money collected for Church Purposes.

(A)—*Money collected or received for a specified society or purpose.*

(1) When money is collected or received for any purpose connected with the Church of England, it is very desirable that *the object* to which it is to be applied *should be clearly understood before it is*

received. In the case of money collected in church, this is best done by an announcement made at any time before the collection is taken.

(2) When money is *collected* or received *for any named society* or fund, such as the.....missionary society or the Diocesan Fund, or the like, it must be handed over to the Society or Fund without condition unless the condition has been announced before the money is received.

(3) When money is *collected* or received not for a named society, but *for a named purpose* such as "Church Expenses" or "Church Schools," it must be handed over (without condition, unless previously announced) to those who are legally responsible for carrying out the named purpose, *e.g.*, in the case of church expenses to the Parochial Church Council (or, in the case of Church schools, to the managers; or, it might be, the Diocesan Education Committee or the National Society, according to circumstances which would be sufficiently obvious).

(B)—*When money has been collected or received without previous announcement of the purpose to which it is to be applied, then—*

(i) If the money has been *collected in church in pursuance of the rubric* in the Communion Service, it must be applied in accordance with the rubric at the end of the Communion Service, that is to say, "to such pious and charitable uses as the minister and churchwardens think fit, wherein if they disagree it shall be disposed of as the ordinary shall appoint." They may hand it over to the Parochial Church Council if they so desire for any such charitable purpose as may be within the province of the Council.

(ii) If the money has been *collected in church otherwise* than in pursuance of the Communion rubric, then it is to be applied as the incumbent and Church Council jointly determine, or, if they do not agree, as the bishop directs.

(iii) When money has been *collected* or received *out of church*, there is no specific provision, and responsibility rests with the person or body to whom the money is entrusted, *i.e.*, generally speaking, those to whom it is given or by whom it is collected or received, whether the incumbent, or the churchwardens, or the Church Council, or some of them jointly, or as the case may be.

(iv) *In all the above cases*, (i), (ii) and (iii), those who have discretion as to the application of money may, if they like, offer it subject to conditions, and it is then for those to whom it is so offered to decide whether they will accept it subject to the conditions or refuse it. Thus, in addition to the duties specifically imposed on them by section 4 of the Parochial Church Councils (Powers) Measure, it is the general duty of a Church Council "to co-operate with the incumbent in the initiation, conduct and development of church work both within the parish and outside." In the discharge of this general duty, the Church Council has no right to interfere with the management of work which they are not specifically bound to carry out, but, if they contribute any considerable part of the funds for carrying on the work, they can, like any other donor, exercise indirect influence by making their support subject to such conditions as they think fit.

APPENDIX IX.

Incumbents Resignation Acts. — Computation of "Annual Value" of a Benefice.

The Legal Board of the Church Assembly has from time to time received inquiries from Bishops' secretaries and others as to the proper mode of computing for the purposes of the Incumbents Resignation Acts the "annual value" of a benefice, particularly in reference to certain outgoings.

The definition of "annual value" for the purpose of these Acts is contained in section 5 of the Incumbents Resignation Act, 1887 (50 and 51 Vict., ch. 23), and is as follows:—

> "The annual value of a benefice for the purposes of this Act shall be the net annual value, exclusive of the parsonage, vicarage, or other place of residence of the incumbent, after deducting all rates, taxes and charges assessed upon and payable out of the benefice, which charges shall include the salary of any curate who is compulsorily employed and any annual payments in respect of any terminable mortgage having at the time of the sitting of the said Commission more than two years to run."

It is not proposed in this Memorandum to attempt a complete exposition of this definition, but to deal only with some few points which have been specifically submitted to the Legal Board.

In the first place it is to be observed that annual value is to be reckoned "exclusive of" the house of residence, and the Board are of opinion that *outgoings in respect of the house of residence* (*e.g.*, repairs) are equally excluded from the computation, that is to say, they are *not to be treated as deductions* from the gross annual value in arriving at the net, *unless* they come within some express provision of the definition. The express provision that "annual payments in respect of any terminable mortgage

with more than two years to run" are to be treated as deductions from the gross annual value quite clearly brings into the reckoning *some* outgoings incurred in relation to the house of residence, as a very large number of these mortgages would, in fact, be for moneys expended upon improvements or repairs of the houses of residence.

The questions upon which the advice of the Legal Board has been recently sought have related to the propriety of making deductions from the gross annual value for

(1) Repairs and insurance of glebe buildings, fences, &c.

(2) Ordinary or long assessments under the Ecclesiastical Dilapidations Measure, 1923.

In considering these questions it is to be borne in mind that an award of a Commission under the Incumbents Resignations Acts may be *ultra vires* if it specifies a pension which amounts to more than one-third of the annual value, but not if it specifies an amount less than one-third, as that is within the discretion of the Commission. The Commission is therefore bound to take into account all deductions which fairly ought to be made in arriving at *net* from *gross* as well as all deductions which the statute expressly requires.

In the opinion of the Legal Board the answers to the inquiries on the two points above mentioned are—

(1) It has always been considered reasonable that deductions from gross rents should be made in respect of average repairs and insurance of glebe buildings, fences, &c. (excluding the parsonage house). In the absence of other evidence the statutory allowance made in assessment to Schedule A of the Income Tax Act would be reasonable. This is notwithstanding that there is no express allowance in respect of repairs in the definition of annual value: it falls within the general direction to arrive at a *net* annual value.

(2) Where the cost of repairs has been turned into an annual payment under an ordinary or long assessment under the Dilapidations Measure it

is reasonable to take these assessments as the measure of the allowance in respect of repairs. In any case the ordinary or long assessment ought to be deducted under the express words of the definition (although such charges were not in existence when the definition was framed).

Although " repairs " to the residence house do not fall within the class of outgoings for which deductions are to be made in arriving at net annual value, the whole of any annual charge under an ordinary or long assessment should be deducted (including any part in respect of the parsonage house), because these are charges expressly deductible in accordance with the definition.

The fact that the Parochial Church Council or the Diocesan Board of Finance may be contributing towards the payment of ordinary or long assessments should not be taken into account against the assessment. (L.B. 24/1927.)

APPENDIX X.

In the High Court of Justice.

CHANCERY DIVISION.

Before Mr. JUSTICE ROMER.

In re ISAAC BARNES, Deceased.
SIMPSON *v.* BARNES and Others.

JUDGMENT.

Delivered 20th July, 1922.

Mr. JUSTICE ROMER: In this case the testator gave all his estate and property to the Church of England absolutely, and the first question that has to be determined is what does the testator mean in that Will by "the Church of England." The first question in the summons is this: "Who are the persons or what is the Institution or body meant and intended by the words 'Church of England' in the gift contained in the said Will of all the testator's estate and property to the Church of England." Now Mr. Beebee, who appears for the next of kin, has contended that this is a gift to all the persons who at the time of the death of the testator can say, "I am a member of the Church of England." He says that being a gift to a body of persons whom it is impossible to identify, the gift fails and the testator has died intestate. Now it is quite obvious that the words "Church of England" are capable of more than one meaning. Adopting the statement in Volume 11 of Halsbury, page 371, it says this, after defining on page 370 the Church of England as "That Branch of the Holy Catholic and Apostolic Church which was founded in England when the English were gradually converted to Christianity between the years 597 and 686": "the Church of England, as thus defined, may

be considered as an aggregate of individuals, and in that sense may be regarded as including all persons who adhere and conform to the liturgy and ordinances of the Church of England as by law established, or it may be considered as an organised operative institution." On page 356 of the same volume, in a note, it is stated: "'Church' has two distinct meanings,—It may mean either the aggregate of the individual members of the Church, or it may mean the *quasi* corporate institution which carries on the religious work of the denomination whose name it bears." Then there is a statement for which *MacLaughlin* v. *Campbell*, which is reported in 1906, 1, Irish Reports, page 588, is given as authority which says: "if used in conjunction with the name of the denomination (*e.g.*, the Church of Rome or the Church of Ireland) it *prima facie* imports the operative institution which ministers religion and gives spiritual edification to its members." It appears to me the two statements I have read are good sense and good law, and the question that I have to determine is, first of all, in which of those two senses has the testator used the words the "Church of England." It appears to be quite impossible to suppose that the testator here intended to benefit each and every member of the Church of England in the wide sense contended for by Mr. Beebee. It appears to be quite obvious that he refers to the operative institution which has, in one passage I have read, been referred to as a *quasi* corporation, the operative institution which ministers to religion and gives spiritual edification to its members. In the case to which I have referred in 1906, 1 Irish Reports, at page 597, Lord Justice Fitz-Gibbons, in a case in which he had to consider the effect of a gift "for such Roman Catholic purposes" as the trustees might deem fit and proper where the Counsel arguing in support of the validity of the gift had said that that was equivalent to a gift to the Roman Catholic Church, says that: "If the gift were made to 'the Church,' *e.g.*, the 'Church of Rome,' or 'the Church of Ireland,' I should think that it would import"—at least, *prima facie*—"the operative institution which ministered religion and gave spiritual edification to its members." Now in my opinion that is the meaning in which the testator has used the words "Church of England," and I hold that this is a gift to the institution which ministers religion and gives

spiritual edification to the members of the Church of England. If that be so, for what purposes is it given to the Church of England? It appears to me it is obviously given for these very purposes which I have just mentioned, namely, for the purposes of religion and giving religious edification, and so forth. That being so, I think without any question that the gift is a good charitable gift.

The only other point which was partially argued before me was as to who in the circumstances could give a receipt for the residuary estate which I have held was validly given to the Church of England. Mr. Tomlin, who appears for the Central Board of Finance of the Church of England, claims that in the circumstances he has a right to have it paid to his clients. Mr. Pollock, on behalf of the Attorney-General, disputes that as a claim of right, but he would be quite willing if a scheme were settled to provide by that scheme for payment of this money to the Central Board of Finance. In the circumstances I am glad to say I have not to decide that very interesting and perhaps more difficult point, because Mr. Tomlin agrees that, without prejudice in any way to his right to argue that at full length on some other occasion, he is willing on this occasion, and perhaps on this occasion only, that the money should be paid to his clients in pursuance of an agreement which I now sanction for that purpose.

Then the costs of all parties as between solicitor and client will come out of the estate.

APPENDIX XI.

A Charge to Churchwardens.

By CHANCELLOR F. H. L. ERRINGTON, D.C.L.

GENTLEMEN,—No change has occurred in your status or duties since the considerable change made by the passing of the Parochial Church Councils (Powers) Measure, 1921. Before that date, having regard to the composite character of the Vestry, the churchwardens were the only representatives of the laity in direct contact with the Incumbent. Now we have a representative Church Council, to which many of your powers and duties have been transferred. Some, and not the least important, remain ; but the outstanding quality of your office is, or should be, that you form the connecting link between the Incumbent acting in that capacity alone and the Council.

It is inevitable that the position as between an Incumbent entitled and accustomed to have his way in church matters and a newly constituted authority, perhaps over-eager to assert itself, should in certain cases lead to friction. It is, I think, surprising that in my experience at least there have been so few. Nor do I propose to dwell on them. Healthy disagreement there may well be : an Incumbent may have to learn to be contradicted, the Council that there are limits to their powers. But so long as both sides remember that their duty is co-operation in church work, no harm is done by differences of opinion. It is only when differences are carried to the point of obstruction that real danger may result, and here churchwardens, who have the best opportunities of knowing both sides of the question, may well exercise a wholesome restraining influence. A sense of proportion, not unmingled, perhaps, with humour, will generally reconcile the most tempestuous adversaries. Laughter is, after all, a great solvent.

In this connection I would suggest that churchwardens should always be parishioners, and, when at all possible, persons living in the parish and knowing the minds of the parishioners.

I am impressed by the way in which our parish churches in the larger towns are increasingly becoming congregational. I am further impressed by the number of loyal Churchmen who stand aloof from the new organisation, owing partly, no doubt, to national stubbornness, but also, I think, to a distrust of new institutions not rooted in the parish but in the congregation. They say, in fact, that the National Church is being organised into a sect, and it lies with the churchwardens and the Council to draw them into the new organisation by making it clear that church work in the parish is their objective, and that the church is the home of every parishioner who desires to regard it as such, whether on the electoral roll or not. From another point of view it is almost essential that churchwardens should be parishioners. They are the officers of the Ordinary. Great weight is attached to their statements as such officers on matters affecting the parish. By choosing a stranger as churchwarden, the Ordinary is in substance deprived of this most valuable source of information.

Though it may not be necessary, I think it may be useful for me to remind you of the matters which, though in some cases they form part of the responsibilities of the Council, yet need your vigilant attention. They are these:—

1. As to Repair and Insurance.

Where the church is an old parish church, and except in the rare cases where the whole church is by custom repairable by the parishioners, the Rector, whether clerical or lay, was responsible for repairs to the chancel. The liability of a clerical Rector has been taken away, but that of a lay Rector remains, and his liability can be enforced by suit in the Consistory Court. The receipt of the great tithes may be taken generally to indicate the person who, as lay Rector, is liable to repair. If there are more persons than one, they are as between themselves liable to contribute rateably, but any one or more may be sued without making all parties. The liability is a personal one, and it is doubtful whether it can be enforced by sequestration. The liability is direct, and the repairs cannot first be done and the Rector sued for the costs. As to enforcing this liability, it would be safer for both the

churchwardens and the Council to sue. Subject to this liability of the lay Rector, the parish ought to repair the church. The churchwardens, however, acting on behalf of the parish, were only liable for such repair so far as there were moneys in their hands, and it is that liability which has been transferred to the Council.

The lay Rector, where liable for repairs, is the proper person to insure the chancel; otherwise the insurance of the church and its goods or ornaments is the duty of the Council.

In considering insurances, the churchwardens should impress on the Council the necessity of a full insurance, and for that purpose of considering the question every year. They should also see that all precautions are taken in matters of heating and lighting. It is most desirable that an efficient lightning conductor should be provided. Insurance of church goods should be made in the names of the churchwardens.

2. As to Church Goods.

The property in these being still vested in the churchwardens as a corporation, the churchwardens are the persons to take proceedings for their recovery if stolen or improperly removed. No one has power to dispose of church goods without a faculty. In practice there is some inconvenience in the preservation of church goods being imposed by the Measure on the Council, while the property is in the churchwardens; but the churchwardens should also in this case impress upon the Council the necessity of special precautions with regard to the Communion plate, where of any value, and the desirability of providing a safe for the custody of valuable articles, or documents such as register books for baptisms, banns, and burials, which have now to be provided by the Council.

In this connection an inventory of church goods, as well as a terrier of church lands, are of great value and importance.

3. As to Good Order at Divine Service.

The churchwardens are still the persons to enforce good order. They can eject from the church without

unnecessary violence any person causing disorder, and can prevent idle persons abiding in the churchyard or porch during service. They have statutory power to apprehend any person guilty of riotous, violent or indecent behaviour in the church or churchyard, and can take him before a magistrate, who can fine or imprison the offender.

The seating of the congregation, apart from owners of seats held under a faculty or by prescription, rests with the churchwardens. They can, if they think fit, allot seats to a parishioner and his family so long as they deem it desirable; but their discretion in the matter is liable to review by the Ordinary. Proceedings can be taken either in the ecclesiastical or the civil courts against any person interfering with the allocation of seats by the churchwardens.

4. As to the Control of the Church and Churchyard.

As to the church, the Incumbent has the right to the keys, but the churchwardens have a right of free access for the purpose of their duties. As to the churchyard, the Incumbent denotes the position for graves, but a faculty is necessary to give an exclusive right to any grave space. Nor is the consent of the Incumbent to the burial of a non-parishioner sufficient without the consent also of the Council, which is responsible for the care and maintenance of the churchyard. With regard to the deposit in a church of cremated remains, it can only be done under a faculty; and my view is that it should only be allowed where the deceased has been conspicuous in the service of the church and parish.

5. As to certain Obligations of the Churchwardens.

The churchwardens are still the proper persons to collect the alms in church, which they do as officers of the Ordinary. Except as to alms collected at the offertory, they should pay all moneys collected for church expenses to the account of the Council, and should hold all moneys collected for other objects according to the joint directions of the Council and the Incumbent, which should, I suggest,

be given beforehand to obviate the necessity of the churchwardens having to bank money pending such directions. Moneys collected at the offertory are still to be disposed of for such pious and charitable uses as the Incumbent and churchwardens think fit. The expense of providing the bread and wine for Communion could, if necessary, be defrayed out of them.

6. As to the Fulfilment of his Duty by the Incumbent.

It is the plain duty of the churchwardens to inform the Ordinary, at least for the purposes of further inquiry, of any neglect of duty or impropriety of life on the part of the Incumbent. They should, however, bear in mind that the rules of evidence are the same in all courts, and that scandal not based on ascertained facts is not a sufficient cause of action. In other words, they should satisfy themselves before presenting that their presentment has a foundation of fact. A presentment of this nature, made in good faith, is a privileged communication.

In this connection it should be remembered that the Benefices (Ecclesiastical Duties) Measure, 1926, includes in the duties of the clergyman the duties imposed by the Rules for the Representation of the Laity, and an obligation to manifest in his acts, conduct and course of life due respect for his sacred office, and a due solicitude for the moral and spiritual welfare of his parishioners. Where the Bishop thinks the ecclesiastical duties of a benefice are inadequately performed, he can appoint a commission of inquiry. If the Commissioners find that the duties are inadequately performed, the Bishop has various powers of himself appointing a curate and inhibiting the Incumbent, or of requiring the Incumbent to nominate a curate, according to whether the Commissioners have found negligence by the Incumbent or not.

7. As to other Officers of the Church.

The sidesmen, who act as assistants to the churchwardens, are under the Measure elected annually by the Parochial Church Meeting and the Incumbent (section 14). The parish clerk and sexton are appointed and dismissed

by the Council jointly with the Incumbent (section 6, (iii)). The appointment and control of the organist and choir still remain with the Incumbent.

In those few parishes where the Measure has been disregarded, and no Church Council has been established under the Measure, the powers and liabilities of the churchwardens remain as before. The Measure does not in any way affect the funds held before or after its date by the churchwardens, or by them and the Incumbent on special trusts for the benefit of the church. The Easter or other Vestry for ecclesiastical purposes is still summoned by the Incumbent and churchwardens, and in the customary form.

New Legislation.

In its new legislation the Church Assembly is rapidly catching up with the more pressing needs of church organisation. The Benefices Act, 1898 (Amendment) Measure, 1923, renders rights of patronage in general incapable of sale after two vacancies have occurred, and prevents a clergyman, or his wife, acquiring a benefice with a view to presenting the clergyman himself.

The Union of Benefices Measure, 1923, provides for a Diocesan Committee putting the Measure in motion after a general survey of the diocese, or of a particular part of it. The subsequent proceedings are much the same in character as under the Act of 1919, but the Committee of Inquiry is to have full regard to the circumstances and interests of the parishes affected, and to consider the proposed union in its relation to such circumstances and interests and to the interests of religion in England generally. The churchwardens no longer nominate a commissioner, but the patron and Parochial Church Council of each benefice affected nominate a commissioner jointly.

When such an inquiry is held, it is very desirable that the Parochial Church Council should pass a resolution in relation to the proposed union, and that some nominee of the Parochial Church Council, or of its Standing Committee, and in any case the churchwardens, should attend to explain fully the views of the Parochial Church Council and of the parish.

The Ecclesiastical Dilapidations Measure, 1923, has

greatly alleviated the hardships which are inevitable where old, and often oversized, houses are occupied by Incumbents of slender means; and it, of course, to some extent affects your duties as sequestrators. The Surveyor's inspection has to be made periodically, the liability being to keep buildings in good and substantial repair (section 18). Annual payments are assessed to provide for repairs. The Incumbent or the sequestrators (as the case may be) are by section 24 to pay three rates—a Repair Rate, an Insurance Rate, and an Administration Rate—this last being a payment towards the expenses of administration by the Central Authority and the Diocesan Dilapidations Board. In the case of sequestration a copy of the Surveyor's Report as to dilapidations has to be sent to the sequestrators, and a person responsible for the execution of repairs has one month to appeal from the Report. As to any order for payment while the benefice is in sequestration, the sequestrators are only, of course, liable to the extent of any profits of the benefice remaining after payment of the stipend of the Curate appointed to perform the duties.

By the Clergy Pensions Measure, 1926, a Clergy Pensions Fund has been established for the purpose of providing pensions for clergymen retiring at or after the age of seventy with at least fifteen years' service. Every beneficed clergyman and assistant curate is a compulsory contributor to this fund, his contribution being calculated on the amount of his assessable clerical income, which means, as to an Incumbent, the net annual value of his benefice, including the parsonage house, and as to a Curate, the annual amount of his stipend.

Provision for dilapidations and pensions has long been overdue, but the combination of the two Measures within so short a time undoubtedly places a heavy burden on the present Incumbent. Both Measures contemplate relief being given by the parish. Section 45 of the Dilapidations Measure requires a copy or summary of the Surveyor's Report and Dilapidations Order, and a copy of any assessment, to be sent to the Parochial Church Council, or churchwardens (when there is no Council), with a view to the parish assuming some part of the liability. Under section 33 of the Pensions Measure the Pensions Authority has to send to the Council (or, if none, to the church-

wardens) a notification of the charge imposed by the Measure on the Incumbent, again with a view to the parish co-operating. Where there is, in the opinion of the churchwardens, good ground for parish assistance in these matters, they should not leave to the Incumbent the rather delicate task of urging his own necessities, but should themselves be his spokesmen in the Council and to the parish.

These are organising times, and the Church Assembly is amply vindicating its usefulness as a body capable of adapting church machinery to modern conditions; its weakness lies in the small electorate on which it ultimately rests. Here we come back to the necessity I have already referred to of the Incumbent, the churchwardens, and the Council, all co-operating in working on parish lines. Party organisation may suffer, but the electoral roll will increase, and Church legislation be increasingly vitalised.

The Consistory Court.

I may add a word on a matter that intimately concerns you as officers of the Ordinary, that is the working of the Consistory Court. I am glad to say that the cases of alterations in churches being made, or articles introduced, without a Faculty are becoming rarer. This is largely due to the advisory committees, who are not only raising the standard of taste, but in so doing are emphasising the necessity of that supervision which can only be effectively exercised by the Bishops' Court. We are, most of us, peculiarly sensitive in matters with regard to which we hold strong opinions but in reality know very little; and advisory committees cannot do their work properly without sometimes offending the art consciousness of the persons concerned. I would ask, however, such persons to remember that these committees consist of persons highly skilled in the various branches of Church art, and who give their services voluntarily, with the sole object of maintaining the great heritage of beauty we possess in our churches, and preventing the deplorable lapses in art and the general vandalism which prevailed in the last two centuries, owing to the uncontrolled authority permitted to be exercised by the Incumbent and parishioners over their parish church. Thanks to the committees, their

care for good lettering, good glass, good carving, general suitability, our churches should in no long time become centres where the parishioners can be early imbued with right ideas of Christian art. This I believe to be the only way to revive that generally diffused feeling for beauty in architecture and decoration, both in religious and ordinary life, which was so curious and enviable a characteristic of some of the past centuries.

In dealing, however, with churches, I would not have you forget your churchyards. So far as I have travelled, they have no counterpart in Europe for beauty and good order. They seldom come within the purview of the Consistory Court; therefore stimulate your Incumbents to resist the intrusion of oppressive or inappropriate monuments. These churchyards are a unique possession: seek to keep them unimpaired.

I will conclude by again impressing on you the responsibility of your office deep rooted in the past. It is well with the Church while she can find men in every parish willing to serve her in an office which brings no fame or reward, no special power or authority, yet an office which, simply and sincerely held, with due regard to the rights and duties of the Incumbent and of the parishioners, and in steadfast loyalty to the Bishop, still holds its place within the deep foundations on which the Church of England is truly built.

F. H. L. ERRINGTON.

1928.

APPENDIX XII.

Births and Deaths Registration Act, 1926.

1. Before an ordinary Church of England burial takes place in a Churchyard the Incumbent of the parish must be satisfied that a "certificate for disposal" of the body has been issued by the Registrar of Births and Deaths, or a corresponding order made by the Coroner.

2. (*a*) The Registrar's certificate (or Coroner's order) should be produced to the Incumbent, but (*b*) If the Incumbent is satisfied by a written declaration in the form appended hereto that the certificate or order has been issued, but has been left behind or mislaid, he may proceed with the burial, provided he gets an undertaking that the missing certificate or order will be produced to him as soon as possible. A duplicate of the certificate can if necessary be obtained from the Registrar at a cost of 5*s*.

3. If there are several burials at the same time the certificates must not be mixed, because the particulars of each burial must be filled in by the Incumbent on the detachable portion of the certificate or order authorising that particular burial and no other. The detachable portion must then be torn off and delivered by messenger or in ordinary course of post to reach the Registrar of Births and Deaths of the sub-district within 96 hours of the burial. The Incumbent is responsible for all this, and his fee for the burial is increased by sixpence.

4. The burial of stillborn children must be authorised by a certificate or order in the same way as in the case of an ordinary body; but in that case (*a*) the burial may in no case proceed without production of the actual certificate or order, and (*b*) the burial need not be notified, and the certificate or order has no detachable portion for that purpose.

5. In the case of a Nonconformist burial in a churchyard

when the service is conducted under the Burial Laws Amendment Act, 1880, the above duties do not fall on the Incumbent but on the relative, friend or legal representative of the deceased having the charge of or being responsible for the burial.

FORM OF DECLARATION OF ISSUE OF REGISTRAR'S CERTIFICATE OR CORONER'S ORDER.

BIRTHS AND DEATHS REGISTRATION ACT, 1926, s. 1 (1).

I, of
in pursuance of the Births and Deaths Registration Act, 1926, declare—

(1) That I am the person procuring the burial of the body of who died
at on the

(2) That a { Registrar's certificate / Coroner's order } authorising burial was issued by the { Registrar / Coroner } Mr.
at to
living at on

(3) That the reason why the said document cannot be delivered before burial is that

I make this declaration, believing the same to be true.

Signature of Declarant

Date

NOTE.—The above form may be written out by hand. Printed copies may be obtained from the Press and Publications Board, Church House, Westminster, S.W. 1. Price ½*d.* each.

APPENDIX XIII.

List of Publications

Obtainable from the Press and Publications Board, Church House, Westminster, S.W. 1, or from any bookseller.

CHURCH ASSEMBLY.

Constitution of the Church Assembly, together with the scheduled "Rules for the Representation of the Laity" **and** the Church of England Assembly (Powers) Act, 1919, commonly known as **the Enabling Act** [N.A. 57], price 6*d*.

Standing Orders, 1925 [C.A. 171, and C.A. 171A], price 1*s*.

Measures which have received the Royal Assent and which are printed and sold by His Majesty's Stationery Office may be obtained through the Press and Publications Board or any bookseller. They are also printed in the Law Reports edition of the Statutes:—

	s.	*d.*
Convocations of the Clergy Measure, 1920 ...		1
Parochial Church Councils (Powers) Measure, 1921		3
Ecclesiastical Commissioners Measure, 1921 ...		1
Union of Benefices Measure, 1921		1
Representation of the Laity (Amendment) Measure, 1922		2
Pluralities Act, 1838 (Amendment) Measure, 1922		2
Revised Tables of Lessons Measure, 1922 ...		6
Benefices Act, 1898 (Amendment) Measure, 1923		2
Bishopric of Blackburn Measure, 1923 ...		3
Diocese of Southwell (Division) Measure, 1923		3

Measures—(*cont.*)	*s.*	*d.*
Diocese of Winchester (Division) Measure, 1923		6
Ecclesiastical Dilapidations Measure, 1923 ...		9
Union of Benefices Measure, 1923		9
Interpretation Measure, 1925		2
Bishopric of Leicester Measure, 1925		3
Diocesan Boards of Finance Measure, 1925 ...		2
Rural Deaneries of Pontefract and Hemsworth (Transfer) Measure, 1926		2
Brislington Parishes (Transfer) Measure, 1926		1
Parish of Manchester Division Act, 1850 (Amendment) Measure, 1926		2
First Fruits and Tenths Measure, 1926 ...		2
Ecclesiastical Commissioners Measure, 1926 ...		2
Clergy Pensions Measure, 1926		9
Episcopal Pensions Measure, 1926		2
Benefices (Ecclesiastical Duties) Measure, 1926		4
Indian Church Measure, 1927		2
Clergy Pensions (Amendment) Measure, 1927 ...		1
New Dioceses (Transitional Provisions) Measure, 1927		1
The Tithe Act, 1925		6

Note.—A full Report of the Proceedings of the Assembly, price 2*s.* 6*d.* a Session, is published, and also an epitome, Acts of the Assembly, 1920-24, price 1*s.*, and 1925-27, 9*d.*

CENTRAL BOARD OF FINANCE.

The Memorandum and Articles of Association of the Central Board of Finance, and also its Standing Orders, are printed but not published for sale.

THE DIOCESES.

In addition to the Diocesan Boards of Finance Measure, 1925, and the other Measures of general interest listed above—

The **Diocesan Conferences Regulation** [N.A. 63], price 2*d*.

Forms under the Ecclesiastical Dilapidations Measure, 1923:—

		s.	*d.*
L.C. 14A.	Surveyors' Report to Incumbent under Section 18		2
L.C. 15.	Certificate for Payment of Money under Section 32		2
L.C. 16.	Order under Section 21		2
L.C. 17.	Form of Register ... ... *per* 50	2	9
L.C. 18.	First Inspection of Benefices „	1	1
L.C. 19.	Form of Benefice Account „	7	6

THE PARISH.

Forms:—

P.B. 7.	A Church Notice ... ... *per* 100	1	6
L.C. 3.	Model Form of Assurance under Section 5 of the Parochial Church Councils (Powers) Measure, 1921. With Foreword (L.C. 2)		8
E.R. 1.	Resident Electors:—Declaration as to Qualification ... *per* 100	1	0
E.R. 2.	Non-Resident Electors:—Declaration as to Qualification *per* 100	1	0
E.R. 3.	Electoral Roll, Foolscap Sheets for *per* 100	3	2
E.R. 4.	Revision of Roll, Public Notice of		1
E.R. 5.	Parochial Church Meeting, Public Notice of		1
E.R. 6.	Parochial Church Council:—Convening Notice and Form of Agenda *per* 100	3	0
E.R. 7.	Parochial Church Meeting, Voting Paper for use at ... *per* 100	5	0
E.R. 8.	Churchwardens, Public Notice of Election of		1

Forms—(*cont.*)

		s.	d.
E.R. 9.	Election Nomination Paper, and Form of Consent ... ... *per* 100	2	6
L.C. 28.	Parochial Trusts		½
L.C. 30.	Declaration of Issue of Registrar's Certificate or Coroner's Order...		½
L.C. 31, 31A.	Births and Deaths Registration Act, 1926 (small and large sizes) ...		½
P.B. 35.	The Church Electoral Roll... ...		½
P.B. 36.	Voting Members of the Church ...		½
P.B. 7.	A Church Notice ... ... *per* 100	1	6

Accounts and Finance.

O.C. 174.	The New Way in Church Finance:—Suggestions on Church Finance for Churchwardens, Incumbents, and Parochial Church Councils... ... *each*		1
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ADDENDUM.

The following Opinion has been approved by the Legal Board while the present volume has been passing through the Press.

Opinion No. 93.

"Ecclesiastical Purposes," P.C.C. (Powers) Measure 1921, s. 4 (3) (ii) :—

(i) The definition of "ecclesiastical purposes" in section 4 (3) (ii) has no reference to section 5, which deals with the power of the Parochial Church Council to acquire property, real or personal.

(ii) It is the duty of a Parochial Church Council to keep within its powers, and the Legal Board do not feel called upon to deal with a hypothetical question as to how a Church Council may be restrained if they exceed their powers, *e.g.*, if a Church Council acquired property and used it for other than "ecclesiastical purposes." The particular remedy would depend in some measure upon the circumstances of the case.

(iii) "Recreation purposes" do not in themselves constitute an "ecclesiastical purpose," but the trusts of a recreation-ground might be so framed that an ecclesiastical charity would be constituted.

(iv) The purposes scheduled to the Model Form of Assurance are all such as fall within the scope of the purposes for which a Parochial Church Council are authorised to acquire property.

(v) As regards the position of an Incumbent in the management and administration of property

acquired by a Parochial Church Council or in which the Parochial Church Council may otherwise have some control or interest, reference must be made in each case to the particular trust deed which has to be construed. Where under section 5 the Parochial Church Council has acquired any property "with power to manage and administer" and the deed gives no power of management to anybody other than the Parochial Church Council, the Incumbent has no right of management, separate and distinct from that of the Council of which he is a member.

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